DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

December 19, 2017

Via ISIZ

Nefretiti Makenta
3618 11th St, NW
Washington, DC 20010

Board of Zoning Adjustment
441 4th St, NW Suite 210S
Washington, DC 20001

Re: **Appeal No. 19573**
1) Pro Se Appellant's Response To DCRA's Motion to Reopen the Record;
2) Response to the New Information Included in and Attached to that Motion;
3) Motion for Continued Hearing;
4) Motion to Reopen the Record (If Necessary) for Testimony and Exhibits Attached Here; and
5) Motion to Postpone Decision Date

Pursuant to Title 11, Appellant hereby requests all of the above, and in support of such, states as follows:

Pro Se Appellant Response To DCRA's Request to Reopen the Record For the Inclusion of a Building Permit

Pro Se Appellant opposes the inclusion of this 2nd revised building permit to the extent that is prejudices this case regarding the 1st revised permit. Pro Se Appellant supports the inclusion of the 2nd revised building permit to the extent that it strengthens the likelihood that her Appeal is upheld. In support of such states as follows:

1. DCRA's method of incorporating this newest revised permit appears to be improper. According to the PIVS record and DCRA's Plan Review log, the ZA did not review the guardrail plan prior to DCRA approval. No ZA official signed off on this permit. As the newest revised permit--for a project approved only through a BZA Special Exception with plans previously approved by the BZA, which are required to be adhered to--was issued without ZA review and approval, this permit is invalid.

2. DCRA has prejudiced the Pro Se Appellant's case by attempting to wedge this 11/20/17 building permit into her case at the last minute, which convolutes and/or complicates resolution. To the extent that the building permit has no zoning code implications (as the ZA appears to be claiming) but only building code implications, the permit should not be included in this appeal. It is the Appellant's understanding that the ZA cannot testify to a permit that he did not review and approve.

3. The building permit changes material facts upon which the 11/15/17 BZA hearing was based and introduces new facts that need to be addressed, argued and/or resolved in the proper forum. As any inclusion of this permit changes the material facts of this case, it presents the need to hear additional testimony regarding the new facts related to this appeal or a new appeal in the context of the zoning code.

4. DCRA states that inclusion of this building permit into the record of this case avoids the possibility of a separate appeal. This is untrue. Simply adding this permit to the record does not automatically nullify

anyone's due process right to 60 days to appeal any zoning decision. All building permit numbers are supposed to be included at the time of filing an appeal. No Appellant has filed a case including this permit, but that right remains. Though there is no zoning approval on this building permit, there is nothing that can be approved through the building code that has zoning code implications that cannot be appealed to the BZA. It is this Appellant's contention that this building permit includes zoning code implications, and that therefore, this revised building permit can be appealed to the BZA.

5. DCRA's entry of this building permit prejudices the Appellant's case in that the ZA did not make this permit available prior to the filing of the case in June 30, 2017 or prior to the case being heard November 15, 2017, though they easily could have. (See Exhibit 46 in case record: Emails Between Appellant and DCRA and Owners between May 2017 and September 2017 notifying DCRA of the need for a Guardrail and the Setback)

6. The new permit raises new zoning issues as the guardrail is not setback as required. Issues raised by the addition of and placement of this guardrail were not addressed in the prior BZA proceeding. Should the permit be incorporated into this appeal, the Appellant has a right to question the ZA and to submit evidence in response. The ZA should testify as to how this guardrail does not fall under Section C-1502.1c2, which specifically addresses guardrails on roofs. Appellant is entitled to question the ZA on this matter of zoning compliance with the other parties. The Pro Se Appellant is not the only party in this case.

7. To attempt to avoid this Appellant's need for a separate appeal and the exorbitant fee associated with that ($1,040) and to address the zoning implications of this building permit, Appellant hereby requests a continued hearing regarding material facts related to this new building permit.

Pro Se Appellant Response to the New Information Included in and Attached to DCRA's Motion

1. The 2nd revised permit does not adequately resolve concerns related to the 1st revised permit in this case, a result of the ZA's error in his application of the zoning code. Nothing in this 2nd revised permit, which places a guardrail just 2-inches away from the party parapet wall, mitigates the crux of this appeal, which maintains that zoning regulations require setbacks of the roof deck (and guardrail) and that the adjoining neighbor's privacy, light and air are negatively impacted due to the lack of the required setbacks. (See Exhibit 31 and 37 in case record: 3 Videos clips showing parapet party wall where guardrail is being positioned in light of window well and Exhibits 23 and 24, photos of relative Side Deck intrusion)

2. If unchecked by the BZA, through the Side Roof Deck, the ZA will facilitate a property rights and interests grab. The deck, now with the guardrail essentially at the party line and no setback, effectively takes light, air and privacy of use and enjoyment from a DC native and long-term DC property owner and gives a light-filled, airy, and essentially private Side Roof deck to transplant Intervenors, dozens of potential transient guests and/or any newcomer to whom they may decide to sell one (1) or both units upon completion in 2018. The installation of this Side Roof Deck, even with the guardrail on the 2nd revised permit, violates the spirit and intent of the Zoning Regulations.

3. While DCRA attempts to utilize its Motion to Reopen the Record to advance untenable positions regarding the zoning code, DCRA also further validates the fact that good cause exists for this appeal to be upheld. Page 2 of DCRA's motion, states:

a) "The elevations and plans approved with the Guard Permit show that the guard will be 42" high above **roof deck**."

b) "Section C-1502.1c2 only applies to **penthouses**, which **are above the maximum by-right envelope**-- in this case above the by-right permitted **third floor where the Side Deck is located**."

Presumably for their argument in 3a, DCRA meant to write Side Deck or balcony. But the Appellant's argument is validated through DCRA themselves specifically calling it a "roof deck," not a balcony, as they are acknowledging that it is, indeed, on the second floor roof and is easily termed a "roof deck," which Section C-1501c2 governs.

Presumably for their argument in 3b, DCRA meant to write upper roof deck where they wrote Side Deck, as the Side Deck is not above the 3rd floor, it is above the 2nd floor and the uppermost roof deck is above the 3rd floor. Further, here DCRA defines penthouses as "above the maximum by-right envelope." While the maximum by-right envelope of the 3rd floor has the uppermost roof deck on it, the maximum by right envelope of the 2nd floor also has a roof deck on it, and it is clearly subject to the same setback requirement. (See Exhibit 30 in the record: May 2017 plan revision page A001 (or Exhibit 33 in record, plan page A101) showing uppermost roof deck and its guardrails set back four (4) feet of all four (4) sides based on the following code.)

Section C-1501c2 states:
"Penthouses, screening around unenclosed mechanical equipment, rooftop platforms for swimming pools, **roof decks,** trellises, **and any guard rail on a roof shall be setback from the edge of the roof** upon which it is located as follows:
(a) A distance equal to its height from the front building wall of the roof upon which it is located;
(b) A distance equal to its height from the rear building wall of the roof upon which it is located;
(c) A distance equal to its height from the side building wall of the roof upon which it is located if:
(1) In any zone, it is on a building used as a detached dwelling, semi-detached dwelling, rowhouse or flat...
(2) In the R-1 through R-F zones, it is on any building ... that is:
(A) Adjacent to a property that has a lower or equal permitted matter- of- right building height..."

4. The guardrail and roof deck are among the elements of a building subject to the setbacks required under Section C-1502.1c. Whether or not it is or is not a "penthouse" was never truly the issue. But to the extent that the maximum by-right envelope above the 3rd floor roof is deemed a penthouse according to DCRA, the maximum by right envelope above the second floor roof is also fairly deemed a penthouse, particularly in this scenario, where, for more than 100 years, the architectural element of a 3-level window well with 11 full-size windows have been carved into the south wall of the Appellant's property and into the two adjacent properties to the north.

5. The Appellant's 11 windows are full size; fully operable; typical height; and are not at risk. At the hearing, the Intervenors' noted that they have 2 windows on the north wall of their property that face the Appellant's windows. To be clear, their windows, one on the first and second floors, are not full size; not operable; partially past their property line; at-risk; and are 8-feet high and therefore offer no natural direct view into the Appellant's property. Appellant has those same two windows on her north wall.

6. In its Motion to Reopen the Record and at the 11/15/17 BZA hearing, DCRA noted that the "ZA Guidance" email was sent to the Office of Planning (OP) in December 2016. Appellant notes that the DCRA commentary regarding OP currently carries no weight as:
a) DCRA has not provided any written feedback from OP regarding their position on the ZA guidance email specific to the context of this appeal and
b) the Appellant has spoken to two OP Specialists, who have both separately informed her that OP does not get involved in BZA Appeals, only applications.

As such, DCRA's emphasis on OP even further suggests the need for actual OP involvement in a final determination through a proper modification application. The ZA erred in not requiring the Intervenors to submit a Modification Application to the BZA, which would have triggered direct OP analysis regarding the applicability of the "ZA guidance." Both the Appellant and DCRA seem to agree that OP analysis is welcome. And the Modification of Significance application seems to be the only appropriate way to close the loop, as based on OP's original report regarding the Special Exception Application, they were unaware of both the adjoining owner's 11 full-size windows and the potential impact to the chimney.

7. Had the BZA reopened the case in January 2017, when Pro Se Appellant first requested that the record be reopened, these issues might have been resolved sooner. Unfortunately, at that time, she was not aware that she had had any right to be a party to the initial case.

8. At the 11/15/17 hearing, the Intervenors stated that had the Appellant granted them permission to extend her chimney, they would not have had to install a Side Roof Deck where a wall would have been. Yet the Intervenors are blaming the victim. Their logic seems to go like this: Had you given your permission to extend your chimney after you watched us withhold key information from the BZA about concerns, which you'd explicitly expressed to us regarding your windows, to get our Special Exception granted and had you given your permission to extend the chimney after the fact and despite the fact that you learned that we had filed a fraudulent application with DCRA in your name and under your property without your permission to extract our original building permit, trampling on your rights in both prior instances, we would not now be working to trample on your property rights a third time through our (peeping Tom) Side Roof Deck. (See Excerpt from Exhibit Filed in Case 19387 and 19510, May 15, 2017, Motion to Stay BZA Order, Attached here as Exhibit 1. This Exhibit was also Filed in this Case 19573, but is missing from the Record.)

9. To try to begin to correct the series of unchecked wrongs associated with this project and to bring an end the preferential treatment that DCRA seems to be consistently bestowing upon the Intervenors and their development team, the BZA should uphold this appeal as the ZA has indeed erred.

Pro Se Appellant Request to Reopen the Record

Appellant respectfully requests that the Board reopen the record to receive further testimony. ANC Single Member District Commissioner Sharon Farmer rearranged her schedule to attend the 11/15/17 hearing, filled out two (2) witness cards and planned to testify in support of upholding the appeal. However, no request to call the ANC up was made from the dais and the Board never called her to the table to submit her testimony. Pursuant to Rule 507.1c2, the ANC had a right to testify. Appellant respectfully requests that the Board reopen the record for further hearing to receive the testimony of ANC Commissioner Sharon Farmer.

Pro Se Appellant respectfully requests that the Board reopen the record to receive her own testimony. On the morning before the hearing, Pro Se Appellant placed a copy of her testimony into the record. However, the Intervenors made a motion to strike this entry and it was granted as a preliminary matter.

However, Rule 507.2 appears to allow evidence to be offered into the record at a hearing, and though the Appellant was unaware of this rule until after the hearing, the Intervenors seem to have been allowed to take advantage of this rule, when the Board accepted previously unsubmitted photographs into the record at the hearing. And now DCRA has requested to enter an entire building permit, which was not available at the time of the hearing but easily could have been, into the record.

Pro Se Appellant submits that she should be allowed to enter her testimony, which was largely read at the hearing, but which she abbreviated orally due to the time constraint. (See Exhibit 2: Testimony submitted prior to hearing, resubmitted) Of the total 60 minutes allowed for each party to present their case, she was allowed 30 minutes for her opening statement. The entry of her full hearing statement will not prejudice any other party.

Also due to the time limit, Pro Se Appellant was unable to point the Board to the specific exhibits in the record that supported her testimony. At the hearing, she asked the Chairman if she should cite her evidence while reading her testimony or if she should wait until she finished reading it. The Chairman granted the Pro Se Appellant 30 minutes for her opening statement, but left the exhibit demonstration timing up to her. She decided to read her statement into the record without stopping to show exhibits. But by the end of that time limit, no time was left for her to point the guide the Commissioners through her exhibits, which also included three video clips. (See Exhibit 3: Part 2 of this Filing, Exhibit Images)

The Board, she has learned, could have requested that the parties submit "Proposed findings of fact and conclusions of law." However, in light of the fact that this did not occur and that DCRA has used its Motion to Reopen as an additional opportunity to advocate its positions, not just submit the building permit, Pro Se Appellant believes that these relatively minor requests should be allowed.

Based on all of the foregoing, for good cause shown, Appellant respectfully requests that the BZA Reopen the Record for further testimony and exhibits; and continue the hearing, if the revised building permit, which may prejudice the Appellant, is added to the record and postpone the decision date to after the continued hearing date or take other action as the BZA deems proper.

Respectfully submitted,

Nefretiti Makenta, Pro Se Appellant
3618 11th St NW
Washington, DC 20010

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **1) Pro Se Appellant's Response To DCRA's Motion to Reopen the Record; 2) Response to the New Information Included in and Attached to that Motion; 3) Motion for Continued Hearing; 4) Motion to Reopen the Record for Exhibits Attached Here and Testimony; and 5) Motion to Postpone Decision Date** emailed this 19th day of December 2017 at upon:

The following parties and counsel appeared in the agency below:

Party

Meredith Moldenhauer
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Washington, DC 20010

Respectfully submitted,

Nefretiti Makenta, Pro Se Appellant

Exhibit 1: Excerpt from Motion to Stay BZA Order submitted to BZA 5/15/2017 Under Case 19387, Also Included in this case at Exhbit TK

Applicant Misrepresented Material Facts to the ANC and BZA Prior to the Issuance of the Order

Pursuant to Subtitle X, § 901.2, the BZA is authorized to grant special exceptions, where, the special exception: (b) *Will not tend to affect adversely, the use of neighboring property* in accordance with the Zoning Regulations.

Further, pursuant to Subtitle X, § 901.3, the applicant for a special exception *shall have the full burden to prove no undue adverse impact* and shall demonstrate such through evidence in the public record. *If no evidence is presented in opposition to the case, the applicant shall not be relieved of this responsibility.*

In October 2016, ANC1A, a party to the initial BZA case, met to vote on whether or not they would support the Applicants' development. At this meeting, one ANC Commissioner specifically and directly asked the Applicants whether or not the adjoining owners supported the development.

Three (3) ANC Commissioners later informed Petitioner that the Applicants testified that both adjoining owners, including Petitioner, supported the development, though the Applicants had actual knowledge that the Petitioner, the adjoining neighbor to the North, did not.

Petitioner had been in contact with DCRA and the Applicants repeatedly regarding her concerns about their development beginning June 2016. Petitioner had "objected" to the proposed development on a DCRA notification form, which was sent to and received by Applicants and DCRA in September 2016, one month prior to the ANC meeting.

One of the original features of each of the houses in our set of 5 attached row houses is a rare row house treasure, a window well. These large deep wells feature 8 full size windows on the north side of the first and second floors, which are not "at risk" and allow natural light and air to enter on both sides of the attached row homes. Several of these interior windows--visible only from the roof or inside the house--open into bedrooms and bathrooms. Currently the view from and into these windows is substantially private.

Nevertheless, though these were just a few of the concerns expressed by Petitioner to the owner, the Applicants intentionally misrepresented the adjoining owner Petitioner's position to the ANC and gained their approval in a 6-3 vote. And the BZA, the Petitioner later learned, gave the ANC letter of support "great weight."

Then, while under oath, the Applicants continued to make material misrepresentations at the December 2016 BZA hearing. As the Petitioner viewed the live BZA hearing, she witnessed the Applicants and one of their two attorney representatives misrepresent her position before the BZA Commissioners firsthand. When specifically and directly asked, what the adjoining owners had to say about the development project, they stated that the Petitioner was "neutral," except with regard to safety concerns for her property.

This was untrue. And due to Petitioner's repeated communication with the Applicants and DCRA from June 2016 through September 2016 and the level of experience and/or expertise of their development team, they were wholly aware that among the concerns the Petitioner had raised were zoning code concerns, which the BZA would have to consider (and that might impact their plan).

Unfortunately, at that time, the Petitioner, who had no prior experience with and no understanding of the weight of any ANC or the BZA, was completely oblivious to the fact that communicating directly with DCRA could be insufficient to resolve her concerns and was no substitute for either the ANC or the BZA. For the typical DC property owner, for a variety of reasons, DCRA is a household name; The BZA and ANC are not.

Nevertheless, pursuant to Subtitle X, § 901.3, the applicant for a special exception *shall have the full burden to prove no undue adverse impact* and shall demonstrate such through evidence in the public record. *If no evidence is presented in opposition to the case, the applicant shall not be relieved of this responsibility.*

The Public Interest Favors the BZA Granting the Stay

The Applicants withheld or misrepresented key facts --to secure a Letter of Support from the ANC; to secure a BZA Order approving the building height increase; and ultimately to get DCRA to issue a building permit, prematurely and erroneously. The Applicants and/or their representative(s) misrepresented material and/or supplemental facts to public officials in their public capacity at almost every phase of the process.

Facts:

1. The Zoning Administrator erred in that DCRA did not act in accordance with the zoning regulations.
2. The Zoning Administrator erred in that DCRA did not act in accordance with the requirements of the summary order.

DCRA claims:

1. "The ZA correctly determined that the Side Deck **should not be subject to the penthouse setback requirements** of Section 1502.1(c)(2) because the Side Deck is on the third floor and so is not a penthouse."
2. "Side Deck qualifies as a "balcony" **exempt from Section C-1502.1** as articulated by the ZA's December 22, 2016 guidance."
3. "DCRA also asserts that the ZA correctly approved the Revised Permit as the revision:
   A. **did not depart from the plans approved by the Board's Order** in Application 19387"
4. "The Permit Holder requested ZA approval for a **modification from Board approved plans allowed under Section A-304.10**, which the **ZA granted after review**." (Emphasis Added)

Appellee Assertion 1 and Appellant Rebuttal 1

Applicable Zoning Codes and Definitions and Building Code

Subtitle B 1502.1 Penthouses, screening around unenclosed mechanical equipment, rooftop platforms for swimming pools, roof decks, trellises, and any guard rail on a roof shall be setback from the edge of the roof upon which it is located as follows:
(c) A distance equal to its height from the side building wall of the roof upon which it is located if:
(2) In the R-1 through R-F zones, it is on any building not described in Subtitle C § 1502.1(c)(1) that is:
(A) Adjacent to a property that has a lower or equal permitted matter- of- right building height…

Subtitle B 100.2 "When used in this title, the following terms and phrases shall have the meanings ascribed: "Penthouse: A structure on or above the roof of any part of a building."

DCMR12 307 HANDRAILS AND GUARDRAILS 307.1 "…a…balcony, … deck, …shall have guards. Handrails… above the…walking surfaces."

1) DCRA asserts that "the ZA correctly determined that the Side Deck *should not* be subject to the penthouse setback requirements of Section 1502.1(c)(2) because the Side Deck is on the third floor and so is not a penthouse." (emphasis added by Appellant)

1R) Appellant responds that: The Zoning Administrator made an error in arbitrarily deciding that the Side Deck "should not be" subject to the penthouse setback requirements of Section 1502.1.

It is irrelevant that this Side Roof Deck is on the newly created 3rd floor, instead of on the top floor like the other Uppermost Roof Deck, and it is irrelevant that it "is not a penthouse."

This code does not say that these required setbacks are only relevant when they are provided in conjunction with a penthouse, and the items on the list under that code are subject to setbacks collectively *and* independently. The substance of the text is important.

For example, the uppermost roof deck at the Intervenors' property is designed to be setback on all sides per this regulation, though it "is not a penthouse." That roof deck is designed to be accessed from a spiral stairway in the rear yard, not from a penthouse. Indeed, in their own Pre-hearing statement, the ZA confirms that "a 'rooftop deck'… *must* comply with [the] penthouse setback requirements." And this Side "rooftop deck" is no exception to that rule.

Further, prior to filing this case, the Appellant reached out to a top DCRA Zoning Official in an effort to ascertain the possibility of approval for a pergola on her roof to install her permitted solar panels due to her

being disenfranchised and adversely aggrieved by the Intervenors' 10-foot pop up that is now blocking her ability to install her panels directly on her roof. And the number 2 Zoning Official, directly under the ZA, responded that it would be a "trellis," (which is also on the list in this "penthouse" code), and it would therefore be subject to the penthouse setbacks. This requirement was in spite of the fact that the pergola on my roof would have absolutely no remote association with a "penthouse."

Not only is the setback required because the Side Deck is a roof deck-ie. a deck on a roof--and subject to the same setbacks as a upper roof deck, but because a guardrail is also required, per DCMR 12, 307.1. Once DCRA acknowledges that a guardrail is required per their code, the guardrail is also independently required to be set back based on this same zoning code, which states that "any guard rail on a roof shall be setback."

Currently, the Side roof deck is bound by the parapet party wall. But the parapet party wall cannot substitute for a guardrail as it was designed for fire protection purposes between the two houses and is not a guardrail. Additionally, 50% of the parapet belongs to the adjoining neighbor Appellant, and the parapet, covered in flashing for water runoff is unable to be divided such that the Intervenors' hundreds of AirBnB guests could hang over the Intervenors' parapet guardrail without simultaneously trespassing onto the Appellant's parapet.

Further, even if the jointly owned parapet could function as and be deemed a "guardrail," its use as a guardrail at its current position would also violate Subtitle B 1502.1 as it is permanently affixed and unable to be set back. If the parapet wall is transformed into a guardrail, it becomes a different structure. Once any structure is placed on that roof, it must be set back.

Moreover, this parapet wall cannot be a guardrail because it is not level and is too low. The 307.1 requires the guardrail to be 42" (3'6") high. But this parapet wall is not only on an angle, following the line of the adjoining roof, it is also just 24" high at west edge of the Side Roof Deck and 48" as the east edge of the Side Roof Deck.

As such, the parapet party wall cannot meet the guardrail height requirement. And the Intevenors are required to install a separate guardrail on their Side Roof Deck, and based on 1502.1c2, it must be set back at least 3'6".

Appellee Assertion 2 and Appellant Rebuttal 2

Applicable Zoning Code

In addition to code Subtitle C 1502.1c2A, Subtitle B 100.1g states that "Words not defined in this section shall have the meanings given in Webster's Unabridged Dictionary."

2) DCRA asserts that the "Side Deck qualifies as a "balcony" **exempt from Section C-1502.1** as articulated by the ZA's December 22, 2016 guidance."

2R) Appellant responds that: The Zoning Administrator made an error in arbitrarily electing to term the Side Roof Deck, a balcony, instead of a roof deck, as pursuant to Subtitle B 100.1g, the side roof deck does not qualify as a balcony.

As the zoning regulations do not define "balcony" or "roof", 100.1g refers the ZA to *Webster's Unabridged Dictionary* for these terms. This version of Webster's defines balcony as a "usually unroofed platform **projecting from the wall of a building**...and usually **resting on brackets or consoles.**" Though the Side Roof Deck is connected to and attached to the wall of the building it is not projecting from the wall and it is not resting on brackets.

This version of Webster's defines "roof" as "the outside cover of a building or structure including the roofing and all the materials and construction necessary to maintain the cover upon its walls or other support... such a cover of a house or home...the highest point or reach of something." Based on the definition, as per the code, this is a roof deck. The same black roof membrane material currently on the 3rd floor roof is also on the 2nd floor side roof, and the Side Roof deck floor is the highest point of reach of the 2nd floor of that part of the building.

DCRA states that the term roof, "would describe the covering of the top story, but not include the top story itself." Yet a house can have more than one top story covering (ie. more than one roof covering), and in this case, the Intervenors' house has two roofs, a roof on the top of a portion of the new second floor and a roof on the top of a portion of the new third floor. The roof deck is termed a roof deck, because it is on a roof. In this case, there are two roof and there are two roof decks.

Without access, it would simply be a roof. As with the upper roof deck, any stairwell or ladder access would make this a roof deck. In this case, the door access onto this roof floor makes this a Side roof deck.

While the ZA has the authority to guide his staff through internal unpublished memos and emails, he does not have the authority to ignore the Zoning Code, as has occurred here. If the ZA followed the zoning regulations in deciding whether this Side Roof Deck was a roof deck or a balcony, he would have had to refer to Webster's Unabridged dictionary as required. Yet there is nothing in the ZA's December 22, 2016 internal email to his staff that would make a reasonable person believe that the ZA based his decision on this dictionary's definition.

The ZA's email states that he decided that any side deck, which is less than 10-feet wide is a balcony. Yet nowhere in the zoning code or in Webster's is "10-feet" referred to as a decisive factor between a balcony and a roof deck.

As such, to the extent that ZA approval of the plan amendment, which adversely aggrieves the Appellant, was predicated on the 10-foot measurement, the ZA decision was arbitrary and capricious and is not justly upheld by the BZA. There is no provision in the zoning code that gives the ZA any authority to make arbitrary interpretations that negatively impact an adjoining owner.

DCRA is attempting to establish that the 10-foot guideline memo carries the weight of the actual code. It's as if they're saying, it's 10-feet, because DCRA said it's 10-feet. "Because we said so" however, is not supposed to be the determining factor in the ZA being enabled to adversely aggrieve adjoining owners.

The ZA also furnished a diagram, purportedly depicting the difference between a side balcony deck and a side roof deck. But the two images are identical. Moreover, this ZA illustration of the "balcony" versus the "roof deck" does not at all depict the context of this case. The diagram provided by the ZA shows two detached houses, not two attached row houses. Even further, it does not illustrate attached row houses with the architectural feature of adjacent windows on a neighbor's property, as are on the Appellant's and which form a key basis of concern here.

The Intervenors' erroneously approved north Side Deck on their 2nd floor roof overlooks 11 south side windows at my property, including windows in bedrooms and bathrooms which are not at-risk and were built with the property more than 100 years ago. And there are two additional adjoining row houses north of mine, which also have these windows inside of deep window wells.

As a result of this ZA approval, privacy at my property--which I have owned for more than 15 years and which I will own for the foreseeable future--is unduly compromised and negatively impacted. Further, my access to light and air are also compromised as the presence of the Side roof deck at the edge of the property line with no required setback will effectively turn my precious windows into walls, due to the impact of the loss of privacy.

I ask you to consider, to seriously weigh and consider: How would you feel if this Side roof deck were suddenly positioned at the edge of your property and never subjected to any proper, official scrutiny by the appropriate officials, the Office of Planning and the BZA?

How would you feel if DCRA used arbitrary methods--an internal email---and measures--the 10-foot or less guideline (Why not 9 feet?...Why not 6 feet?) -- to steal away your privacy, light and air, and to unjustly enrich your neighbors and their hundreds of AirBnB strangers at your expense? and in perpetuity?

Before you vote, I beseech you to imagine this happening to you at your home.

And then imagine yourself meeting the required deadline to contest it.

And then imagine your BZA Commissioners reaching an unjust conclusion or a conclusion involving favoritism, either to DCRA, the Intervenors or to their ex-BZA colleague?

Please imagine this happening to you and imagine how you would feel about it, before you take a vote.

For no reasonable, unbiased person can deduce that the ZA internal memo is equitably applied in this case. In terming this Side Roof deck a "balcony," the ZA has overstepped its authority and violated zoning regulations. As such, the BZA is supposed to rescind this arbitrary, wanton and capricious ZA approval. The ZA decision to term the immediately adjacent deck on the second floor roof, a balcony, instead of a roof deck and thereby exempt it from required setbacks is major enough due to its adjacency that the BZA (and the Office of Planning) is supposed to require that it be broadly published and subjected to sufficiently broad public scrutiny regarding its impacts prior to any actual adoption.

This ZA "guidance" should be rejected by the BZA in this case, as the Side roof deck, is properly termed a side roof deck, not a balcony.

Appellee Assertion 3 and Appellant Rebuttal 3

Applicable Zoning Codes

Subtitle Y 604.10 An applicant shall be required to carry out the construction, renovation, or alteration only in accordance with the [architectural] plans approved by the Board, unless the Board orders otherwise.

Subtitle Y 702.8 The Zoning Administrator shall not approve a permit application for zoning compliance unless the plans conform to the [architectural] plans approved by the Board as those plans may have been modified by any guidelines, conditions, or standards that the Board may have applied, subject to the minor deviations permitted by Subtitle Y § 703.

3) DCRA "asserts that the ZA correctly approved the Revised Permit as the revision did not depart from **the plans approved by the Board's [December 28, 2016] Order** in Application 19387."

3R) Appellant responds that: The ZA did not act in accordance with the BZA Summary Order as required.

The original Order in Special Exception Case 19387 states that "It is therefore **ORDERED** that this application is hereby **GRANTED AND, PURSUANT TO SUBTITLE Y § 604.10, SUBJECT TO THE APPROVED PLANS AT EXHIBIT 66."** (*emphasis added by the BZA*)

Yet on April 20, 2017, the Applicants filed revised drawings, changing the envelope of the 3rd floor addition, and cutting a 7-foot wide and 7-foot deep section into the center of the addition, which is visible from the street.

It is a blatant falsehood that the revision "did not depart from the plans approved by the Board's Order" as DCRA states. To advance this fraudulent statement, DCRA leans on a typo in the Order. DCRA writes that "The Board's Summary Order … approved the special exception relief requested "subject to the approved plans at Exhibit 66. This Exhibit 66 only showed renderings...," they write, feigning ignorance of and/or shadily attempting to ignore the most substantive part of the requirement in the order: "subject to the approved plans."

Does DCRA not know what "approved plans" are? Certainly they know. DCRA knew what the BZA intended by "subject to the approved plans," and they know that those architectural plans are at Exhibit 8, not at Exhibit 66. They know that "renderings," ie. partial sketches, were not intended to substitute for the "approved plans" in this highly technical space before the BZA.

Yet on the basis of the typo "66," DCRA advances the false claim that "the revision did not depart form the plans approved by the Board's Order." Anyone with eyes can see that the revision departs from the plans approved under the Special Exception Application. DCRA should really be ashamed of themselves for repeating this disingenuous argument, first made by the Intervenors' counsel in Case 19510.

One wonders, what is motivating DCRA in a manner that erodes the faith that the public places in them to care for us all, not just the elite few with a million dollar renovation loan. Not just the elite few who can afford to splurge on not just one attorney, but 2, including a recent former BZA Chairperson, while consistently misrepresenting themselves to the BZA financially fragile?

Will the BZA continue to give DCRA carte blanche in their bend over backwards efforts to cover the Intervenors, despite them fraudulently obtaining their first permit and despite DCRA's the erroneous release of the revised permit due to fraud perpetrated by the Intervenors?

Will the BZA support DCRA in usurping BZA authority for the perpetual benefit of the Intervenors, who acted in bad faith to secure their permit, and to the perpetual detriment of the Pro Se Appellant and her property rights?

Can the BZA please correct the typo in its Summary Order, changing Exhibit 66 to Exhibit 8?

DCRA finally admitted in April 2017 that they erred in approving and releasing the original permit. And the DCRA ZA certainly erred in approving the Revised Permit in May 2017 because, in addition to other reasons, the Revision did indeed depart from "the approved plans" and the changes were not sanctioned by or Ordered by the BZA, as required.

Appellee Assertion 4 and Appellant Rebuttal 4

Applicable Zoning Codes

In addtion to Subtitle Y 702.8 previously stated,

Subtitle A 304.10 For building permits that are authorized by an order of the Board of Zoning Adjustment (the Order), the Zoning Administrator, **following receipt of a request made pursuant to Subtitle A § 304.11**, is authorized to permit modifications to approved plans in addition to those modifications specifically authorized pursuant to flexibility granted by the Order if the Zoning Administrator determines that the proposed modifications are **consistent with the intent of the Board of Zoning Adjustment and** the modifications would not:

(a) Violate any condition of approval included in the Order;

(c) Create any need for new relief;

Subtitle A **304.11** An applicant for a building permit seeking a modification to approved plans permitted by Subtitle A § 304.10 **shall submit a written request to the Zoning Administrator** that is signed by the property owner and that includes a comprehensive list identifying the type and extent of all proposed modifications to the approved plans and a written statement explaining how the requested modifications comply with Subtitle A § 304.10. The applicant shall at the same time serve a complete copy of the request, including any supporting plan documents, on all

304.13 Any modifications proposed to approved plans that cannot be approved by the Zoning Administrator pursuant to Subtitle A § 304.10 shall be submitted to and approved by the Board of Zoning Adjustment pursuant to Subtitle Y §§ 703 or 704 as applicable.

4A. DCRA asserts that "the Permit Holder requested ZA approval for a **modification from Board approved plans allowed under Section A-304.10**, which the **ZA granted *after* review**." (Emphasis Added)

4R. Appellant responds that: The ZA was not allowed to approve the revised plan based on Subtitle A 304.10. At least 3 required criteria in that Section were not met prior to ZA approval, and so in approving the revision under that Section, the ZA erred.

This code states that the ZA may only approve a modification to approved plans, if it does not violate a condition of the Order. Here, the approved plans were the condition that the ZA violated. The BZA wrote: "It is therefore **ORDERED** that this application is hereby **GRANTED AND, PURSUANT TO SUBTITLE Y § 604.10, SUBJECT TO THE APPROVED PLANS..."** (*emphasis added by the BZA*)

Though relatively few words on the Order are emphasized, this sentence is. Webster's Unabridged Dictionary defines "violate" as "to interfere with." Here, the ZA obviously interfered with a condition in the Order, one that the BZA typed in "all caps," bold print.

As previously noted, Section 604.10 states that: "An applicant *shall be required* to carry out the construction, renovation, or alteration *only in accordance with the plans approved by the Board*, unless the

Board orders otherwise." As such, the ZA had no authority to issue zoning approval with the changed building envelope without BZA approval and a second BZA order.

Further, Section 304.10 states that the modification cannot create *any* need for new relief. But not only did this ZA approval violate a pivotal condition of the order, but it also created a need for new relief for the adversely aggrieved adjoining owner due to the ZAs refusal to enforce the required setback and guardrail and due to the invasion of privacy caused by the doorway and walkway to the adjacent owner Appellant's roof and interior windows.

Section 304.10 states that "For building permits that are authorized by an order of the Board of Zoning Adjustment (the Order), the Zoning Administrator , **following receipt of a request made pursuant to Subtitle A § 304.11**, is authorized to permit modifications to approved plans in addition to those modifications specifically authorized pursuant to flexibility granted by the Order if the Zoning Administrator determines that the proposed modifications are consistent with the intent of the Board of Zoning Adjustment **and** the modifications would not: (a) Violate any condition of approval included in the Order; ...(c) Create any need for new relief..." Though the ZA may have had some discretionary right to determine if the proposed modifications were consistent with the intent of the BZA, the second half of this section of Subtitle 304.10 is not based on ZA discretion. As such, the ZA had no authority to use discretion to determining if the modifications "would not violate any condition of approval" and "would not create any need for new relief."

The ZA also violated 304.10's required timing. The Section states that ZA authorization to permit modifications can occur "following receipt of a request." Yet the amended plan was approved by the ZA *before,* not following, the receipt of the Applicant's request. The ZA approved the revised plans May 2, 2017. Yet the Applicants did not submit an application for the request until June 30, 2017, two (2) months later.

The ZA usurped the authority of the BZA and did so not even on the basis of a request (which was required to be in writing per 304.11).

Even within his discretionary power, the ZA could not have fairly concluded that this affront to a neighbor's privacy upholds the intent of the BZA.

The intent of the BZA is to protect and enforce the rights of adjacency. Throughout the zoning code, numerous Titles state some version of the following as off-limits: "substantially adverse effect on the use or enjoyment of any abutting or adjacent dwelling or property, in particular: ... The light and air available to neighboring properties shall not be unduly affected; ...The privacy of use and enjoyment of neighboring properties shall not be unduly compromised; and ...the applicant shall use graphical representations such as plans, photographs, or elevation and section drawings sufficient to represent the relationship of the conversion... The Board of Zoning Adjustment may require special treatment in the way of design, screening, exterior or interior lighting, building materials, or other features for the protection of adjacent or nearby properties..."

Subtitle A, 304.3 further states that: "The Zoning Administrator shall consider the following issues, in determining whether *any deviation* will impair the purpose of the applicable regulations pursuant to Subtitle A 304.2: (a) The privacy of neighboring properties shall not be unduly compromised... (d) The use and enjoyment of neighboring properties shall not be unduly compromised."

ZA discretion does not allow them to flout the intent and purpose of the BZA. Yet in approving the side roof deck with the doorway, which it knew would adversely aggrieve and deprive the neighbor of the privacy of use and enjoyment of her property and as a result also deprive her of the light and air available to her, the ZA did just that.

For all of the above reasons, the ZA erred in issuing zoning approval under 304.10 and effecting the release of the second permit. Pursuant to Section 304.13, the May 2017 zoning approval is clearly supposed to be overturned by the BZA.

The modification proposed to the BZA approved plans "cannot be approved by the Zoning Administrator pursuant to Subtitle A § 304.10." As such, the zoning regulations demand that the Intervenors return to the BZA with the appropriate application. And due the scope of the issues at hand, only a modification of significance or a Special Exception application, which can give the proper weight to relative impact of the Side Roof Deck to rights of adjacency, privacy light and air, is appropriate

If the modification had been allowed to take its due course by way of special exception application before the Board, I would have had the opportunity to articulate my concerns about its impact on the use and privacy of my property, which the administrative approval deprived me of.

By granting the modification as a revised permit, the Intervenors and the ZA have by their own action inserted discussions about the original permit, and the revised permit is inextricably tied to the original building permit.

The Office of Planning or the ANC have not been compelled to make a statement regarding the impact of the third floor Side Roof Deck. And the BZA has never been allowed to properly consider the revised design. As the BZA is the ultimate interpreter of the regulations, and as this revision comes out a Special Exception application, adequate weight to the revision by all stakeholders is paramount.

Sincerely,
Nefretiti Makenta
3618 11th St NW
Wash, DC 20010

------ Forwarded Message
From: nef
Date: Wed, 03 May 2017 08:30:34 -0400
To: Lexie and Graham <lexandg@gmail.com, Eric Gronning <eric@gronningarchitects.com
Cc: "Lee Marsteller (lmarsteller@colegroupllc.com)" <lmarsteller@colegroupllc.com, Meridith Moldenhauer <mmoldenhauer@washlaw.com, Eric DeBear <edebear@washlaw.com, "Parker-Woolridge, Doris (DCRA)" <doris.parker-woolridge@dc.gov, "Ndaw, Mamadou (DCRA)" <mamadou.ndaw@dc.gov, "Thomas, Charles (DCRA)" <charles.thomas@dc.gov, "Bolling, Melinda (DCRA)" <melinda.bolling@dc.gov, "Bailey, Christopher (DCRA)" <christopher.bailey@dc.gov, "Whitescarver, Clarence (DCRA)" <clarence.whitescarver@dc.gov
Subject: Yr expected 3rd floor balcony deck overlooking into bedroom windows of my property

Your new placement of a 3rd floor balcony overlooking into my bedroom windows into my house window well that has been there for 100 years is yet another example of the un-neighborly disregard and disrespect that appears to be your pattern with me. Unfortunately, I will have to fight this as well.

-NM
------ End of Forwarded Message

From: nef Sent: Saturday, June 03, 2017 6:53 PM
To: Ndaw, Mamadou (DCRA)
Cc: Tondro, Maximilian
Subject: 3616 11th St NW side deck Subtitle C Section 1502.1C1A
Importance: High

It appears that Subtitle C Section 1502.1C1A, requires the railing for the contested 3rd floor side deck to be **a 1 to 1 ratio away**, which would require the side deck on the 3rd floor to be setback almost 4 feet.

Can you please advise as to how they are being allowed to build their deck to the party line not only without regard to my 100-year old windows, but also without regard to this setback rule?

Thank you,
Nefretiti M.
------ End of Forwarded Message

On 6/5/17 7:32 AM, "Ndaw, Mamadou (DCRA)" <mamadou.ndaw@dc.gov wrote:

Hello,

The Section you are referring to applies to railings on rooftop decks. The side deck as approved is rather a balcony and is not subject to that provision.

Sincerely,
Mamadou Ndaw
Supervisory Zoning Technician
Office of the Zoning Administrator - DCRA

On 6/6/17 10:03 AM, "Ndaw, Mamadou (DCRA)" <mamadou.ndaw@dc.gov wrote:

Hello Ms. Nefretiti,

The Zoning Administrator interpretation when it comes to differentiating roof decks from balconies, is that roofs that are not more than 10 feet in depth are deemed balconies and are not subject to setback requirements under Subtitle C §1502.1. Moreover the said Section does references roof along with guard rail, see below:
Penthouses, screening around unenclosed mechanical equipment, ..., roof decks, trellises,
and any guard rail on a roof shall be setback from the edge of the roof.

Sincerely,
Mamadou Ndaw
Supervisory Zoning Technician
Office of the Zoning Administrator - DCRA

------ Forwarded Message
From: nef
Date: Mon, 05 Jun 2017 16:30:26 -0400
To: "Ndaw, Mamadou (DCRA)" <mamadou.ndaw@dc.gov
Cc: "maximilian.tondro@dc.gov" <maximilian.tondro@dc.gov, "Parker-Woolridge, Doris (DCRA)" <doris.parker-woolridge@dc.gov, "Bailey, Christopher (DCRA)" <christopher.bailey@dc.gov, "Thomas, Charles (DCRA)" <charles.thomas@dc.gov
Subject: Re: 3616 11th St NW side deck Subtitle C Section 1502.1C1A

Hello Mr. Ndaw,

I am told that although the zoning regulations do not provide a definition for a balcony, it refers to the Webster's Dictionary for terms not defined. And Webster's says that a balcony is a "platform projecting from the wall of an upper floor of a building..."jutting out" over a main floor. This is not a "platform projecting" and is not "jutting out."

It is my understanding that zoning describes two types of balconies; an interior and an exterior balcony. An exterior balcony is one that is cantilevered from the exterior wall of the building and either open to the sky, except that another cantilevered balcony on an upper floor projects above it. Whereas, an interior balcony is enclosed in the sides and has a floor above, thereby creating an alcove effect thus the only opening is where the railing is.

But even if this structure is somehow deemed to be a balcony, Section 1502.1 references guardrails in general, regardless of and without reference to their specific purpose.

Also, a building can have multiple rooftops. It is my understanding that a "rooftop" is the roof of a building on any floor once it is unimpeded above by an intervening floor or roof and open to the sky. That seems to fit what this appears to be...

Also, please note, if anyone fell from that side deck, with my deep window well opening right in front of it, they could fall not just 1 floor down, but 3 floors down. So this also does not seem like a very safe approval...

Can you please let me know zoning's perspective on the above?

Thank you,
-NM

From: nef [mailto:dcnef@earthlink.net]
Sent: Monday, June 05, 2017 5:03 PM
To: Ndaw, Mamadou (DCRA)
Cc: Tondro, Maximilian; Parker-Woolridge, Doris (DCRA); Bailey, Christopher (DCRA); Thomas, Charles (DCRA)
Subject: FW: 3616 11th St NW side deck Subtitle C Section 1502.1C1A

P.s. Actually, they'd fall not just 3 floors down, but 3 floors down into some else's property...

------ Forwarded Message
From: nef <dcnef@earthlink.net
Date: Fri, 09 Jun 2017 12:53:39 -0400
To: "Ndaw, Mamadou (DCRA)" <mamadou.ndaw@dc.gov
Cc: "Tondro, Maximilian" <maximilian.tondro@dc.gov, "Bailey, Christopher (DCRA)" <christopher.bailey@dc.gov
Subject: Re: 3616 11th St NW side deck Subtitle C Section 1502.1C1A

What do you mean by "interpretation"? That the "10-feet" is not anywhere in the code? If not, where are ZA interpretations catalogued?

-NM

From: nef
Sent: Tuesday, September 05, 2017 5:18 PM
To: Thomas, Charles (DCRA); Parker-Woolridge, Doris (DCRA); Tondro, Maximilian (DCRA); LeGrant, Matt (DCRA); Ndaw, Mamadou (DCRA); Bailey, Christopher (DCRA); Whitescarver, Clarence (DCRA); Lester, Sydney (DCRA); Farmer, Sharon (SMD 1A07); Lawson, Joel (OP); Myers, Allison E. (DCOZ); Moy, Clifford (DCOZ); Bolling, Melinda (DCRA); Bardin, Sara (DCOZ)
Cc: Boese, Kent C. (ANC 1A08); Miller, Christine (SMD 1A05); Nadeau, Brianne K. (Council); Jesick, Matthew (OP); abonds@dccouncil.us; dgrosso@dccouncil.us; rwhite@dccouncil.us; Mendelson, Phil (COUNCIL); ATD EOM3; DuBeshter, Richard (ANC 1A06)
Subject: Contested Side Roof Deck PHOTOS etc. (1 of 2)

Dear All,

Please see attached photos highlighting my MAJOR concerns regarding the side roof deck that DCRA has, I sincerely believe, erroneously approved.

I have been informed by a former TOP code official that due to SUBSTANTIAL privacy issues created by the approval of the side roof deck a special exception is required for this side roof deck adjacent to my roof. I have been informed that the Zoning Administrator exceeded its authority in granting the approval for this side deck with a huge double door opening near the party wall on July 11, 2017 administratively and without BZA approval and input from the public.

While I appreciate the interpretation provided by the ZA regarding its new December 2016 interpretation, it does not appear that this interpretation took into context rowhomes like mine with the architectural feature of windows in the center/on the sides which are not "at risk".

If I am wrong, about this being a unique scenario regarding the recent ZA interpretation, can you please forward me the addresses where the ZA was allowed to officially violate another neighbor's privacy besides mine in this manner without a special exception?

As you were previously informed, this side roof deck with its huge double door opening creates a hazardous situation as there is no guardrail on the plans as required by the building code and no setback as required by the zoning code, ETC. The applicants are attempting to use this parapet wall as a guardrail. Yet, as the largely flat roof is sloped to the back, the parapet wall on the east end of this side deck is 4-feet high BUT only 2-feet high on the west edge of this deck. Yet the guardrail requirement is at least 3 feet and the setback would require the railing to be more than 3-feet away from the parapet wall.

Further, this side roof deck would also enable the adjacent owners and their dozens of AirBnB visitors to peer directly into the bedrooms and bathroom windows at my

property, which were built with the property more than 100 years ago and to randomly toss their cigarettes onto my roof... And my roof rating is not higher than adjacent property, so there is no way the architect certified that it is as required under 705.8.7.

While my horrendous experience thus far has been that DCRA is going above and beyond the call of duty to support the adjacent owners with their recent former BZA Chairperson attorney, I sincerely hope that the attached photos shed enough further light on the impact of the problems being created by this specific approval.

Can you (DCRA officials and/or any other city officials emailed herein with ANY power to correct this wrongly approved side roof deck with its HUGE walkout opening onto my roof) please require the owners to submit a "special exception" application as required or immediately rescind the approval for the opening onto my roof administratively?

Thank you for your time and consideration.
-NM

------ Forwarded Message
From: nef
Sent: Sunday, June 04, 2017 11:27 AM
To: Ndaw, Mamadou (DCRA)
Cc: Tondro, Maximilian; Bailey, Christopher (DCRA); Parker-Woolridge, Doris (DCRA)
Subject: Pergola...solar panels?

I am told that installing a pergola on my roof designed to hold my solar panels is a feasible and permit-able option, which could enable me to stave off the perpetual loss of my property rights and interests due to an increased height addition to the south.

Can you please share your initial thoughts and possible next steps regarding the feasibility of permitting a pergola designed for solar panels on my roof from a zoning standpoint?

Thank you for your time and consideration.

-Nefretiti M.
------ End of Forwarded Message

------ Forwarded Message
From: "Ndaw, Mamadou (DCRA)" <mamadou.ndaw@dc.gov>
Date: Mon, 5 Jun 2017 12:09:02 +0000
To: nef
Cc: "Tondro, Maximilian" <maximilian.tondro@dc.gov>, "Bailey, Christopher (DCRA)" <christopher.bailey@dc.gov>, "Parker-Woolridge, Doris (DCRA)" <doris.parker-

woolridge@dc.gov>
Subject: RE: Pergola...solar panels?

Hello,

Per DCMR 11 Subtitle C §1502.1 (a) thru (c), the proposed solar panels and **support structures will be subject to a one-to-one setback from the edge of the roof on all sides**. If the proposed design complies with these provisions, you can submit a building permit application along with the required documents as per the attached guide.

Sincerely,
Mamadou Ndaw
Supervisory Zoning Technician
Office of the Zoning Administrator - DCRA

------ Forwarded Message
From: nef <dcnef@earthlink.net>
Date: Sat, 01 Jul 2017 22:16:56 -0500
To: "Ndaw, Mamadou (DCRA)" <mamadou.ndaw@dc.gov>
Cc: "Tondro, Maximilian" <maximilian.tondro@dc.gov>, "Bailey, Christopher (DCRA)" <christopher.bailey@dc.gov>, "Parker-Woolridge, Doris (DCRA)" <doris.parker-woolridge@dc.gov>, "Thomas, Charles (DCRA)" <charles.thomas@dc.gov>
Subject: Re: Pergola...solar panels?

Hello Mr. Ndaw,

I see pergola's edge to edge on the roofs of properties across the city, without any setback.

But based on your email it appears the you are saying that for solar panels to be installed on a pergola, if the roof is 18 feet wide, as ours are, the pergola with the panels has to be set back 9 feet from each side, which would mean that it would be impossible.

But the code you cite (1502.1) mentions a trellis, and not a pergola and does not mention solar panels at all. It states that:
"Penthouses, screening around unenclosed mechanical equipment, rooftop platforms for swimming pools, **roof decks,** trellises, **and any guard rail on a roof shall be setback from the edge of the roof** upon which it is located as follows:
(a) A distance equal to its height from the front building wall of the roof upon which it is located;
(b) A distance equal to its height from the rear building wall of the roof upon which it is located;
(c) A distance equal to its height from the side building wall of the roof upon which it is located if:
(1) In any zone, it is on a building used as a detached dwelling, semi-detached dwelling,

rowhouse or flat..."

Yet as the proposed pergola is an "architectural embellishment," it appears that Subtitle C Section 1501.3 would apply instead. It states:
"Architectural embellishments consisting of spires, tower, domes, minarets, and pinnacles may be erected to a greater height than any limit prescribed by these regulations or the Height Act, provided the architectural embellishment does not result in the appearance of a raised building height for more than thirty percent (30%) of the wall on which the architectural embellishment is located."

Please review the attached photos with solar panels on pergolas. They are quite attractive, and there is absolutely no appearance of a raised building height.

Further, this appears to be a great work around option to help resolve a fundamental and key issue in this matter of the perpetual and permanent adverse impact on my adjacent property due to a potential 40-foot development to the south.

As DCRA seems to be willing to consistently make code interpretations favorable to 3616, it seems that this interpretation favorable to 3618 regarding a pergola with solar panels is a quite reasonable.

Can you please let me know if 1501.3 is sufficient justification for this application as a matter-of-right?

Or if it's not, can you please let me know what else in the zoning code could prevent this application in light of the attached photos?

I look forward to hearing back from you as soon as possible. Thank you so very much for your time and consideration.

-NM
------ End of Forwarded Message

------ Forwarded Message
From: nef
Date: Mon, 25 Sep 2017 16:55:51 -0400
To: "Tondro, Maximilian (DCRA)" <maximilian.tondro@dc.gov>, "Thomas, Charles (DCRA)" <charles.thomas@dc.gov>, "Parker-Woolridge, Doris (DCRA)" <doris.parker-woolridge@dc.gov>, "LeGrant, Matt (DCRA)" <matthew.legrant@dc.gov>, "Parker-Woolridge, Doris (DCRA)" <doris.parker-woolridge@dc.gov>, "Ndaw, Mamadou (DCRA)" <mamadou.ndaw@dc.gov>, "Bailey, Christopher (DCRA)" <christopher.bailey@dc.gov>, "Whitescarver, Clarence (DCRA)" <clarence.whitescarver@dc.gov>, <sydney.lester@dc.gov>, "Cc: Farmer, Sharon (SMD 1A07)" <1A07@anc.dc.gov>, "Lawson, Joel (OP)" <joel.lawson@dc.gov>, "Myers, Allison E. (DCOZ)" <allison.myers@dc.gov>, "Moy, Clifford (DCOZ)" <clifford.moy@dc.gov>, "Bolling, Melinda (DCRA)" <melinda.bolling@dc.gov>, "Bardin, Sara (DCOZ)"

<sara.bardin@dc.gov>
Cc: "Boese, Kent C. (ANC 1A08)" <1A08@anc.dc.gov>, "Miller, Christine (SMD 1A05)" <1A05@anc.dc.gov>, "Nadeau, Brianne K. (Council)" <BNadeau@dccouncil.us>, "Jesick, Matthew (OP)" <matthew.jesick@dc.gov>, "abonds@dccouncil.us" <abonds@dccouncil.us>, "dgrosso@dccouncil.us" <dgrosso@dccouncil.us>, "rwhite@dccouncil.us" <rwhite@dccouncil.us>, "Mendelson, Phil (COUNCIL)" <PMENDELSON@DCCOUNCIL.US>, ATD EOM3 <eom@dc.gov>, "DuBeshter, Richard (ANC 1A06)" <1A06@anc.dc.gov>
Subject: Re: Contested Side Roof Deck PHOTOS etc. (1 of 2)

can you please forward me the addresses where the ZA was allowed to officially violate another neighbor's privacy besides mine in this manner without a special exception?

------ End of Forwarded Message

From: nef
Sent: Monday, October 2, 2017 18:17
Subject: Foia request? 3616 side roof deck?
To: Tondro, Maximilian (DCRA) <maximilian.tondro@dc.gov>, LeGrant, Matt (DCRA) <matthew.legrant@dc.gov>
Cc: Thomas, Charles (DCRA) <charles.thomas@dc.gov>, Ndaw, Mamadou (DCRA) <mamadou.ndaw@dc.gov>, Bailey, Christopher (DCRA) <christopher.bailey@dc.gov>, Whitescarver, Clarence (DCRA) <clarence.whitescarver@dc.gov>, Lester, Sydney (DCRA) <sydney.lester@dc.gov>, Farmer, Sharon (SMD 1A07) <1a07@anc.dc.gov>, Lawson, Joel (OP) <joel.lawson@dc.gov>, Myers, Allison E. (DCOZ) <allison.myers@dc.gov>, Moy, Clifford (DCOZ) <clifford.moy@dc.gov>, Bolling, Melinda (DCRA) <melinda.bolling@dc.gov>, Bardin, Sara (DCOZ) <sara.bardin@dc.gov>, Boese, Kent C. (ANC 1A08) <1a08@anc.dc.gov>, Miller, Christine (SMD 1A05) <1a05@anc.dc.gov>, Nadeau, Brianne K. (Council) <bnadeau@dccouncil.us>, Jesick, Matthew (OP) <matthew.jesick@dc.gov>, <abonds@dccouncil.us>, <dgrosso@dccouncil.us>, <rwhite@dccouncil.us>, Mendelson, Phil (COUNCIL) <pmendelson@dccouncil.us>, ATD EOM3 <eom@dc.gov>, DuBeshter, Richard (ANC 1A06) <1a06@anc.dc.gov>

Hello Mr. Tondro and Mr. LeGrant,

I haven't receive a response to my query on 9/25/17 regarding other addresses where approvals of side roof decks for other attached row houses in DC with and without adjacent interior windows.

Am I required to file a FOIA Request for a listing of all of the addresses where the ZA approved a side roof deck overlooking an adjacent neighbor's interior windows and using the party (parapet) wall as a guardrail without a 1 to 1 setback and without a special exception application under ZR16?

Or is this something the Zoning Administrator can simply provide? If so, can you please let me know by when I can receive this list of approvals?

Also, if 3616 is the first scenario where this sort of approval has occurred, can you please also let me know this?

Thank you,
Nefretiti M.

------ Forwarded Message
From: "Tondro, Maximilian (DCRA)" <maximilian.tondro@dc.gov>
Date: Tue, 3 Oct 2017 12:38:50 +0000
To: nef
Cc: "Thomas, Charles (DCRA)" <charles.thomas@dc.gov>, "LeGrant, Matt (DCRA)" <matthew.legrant@dc.gov>
Subject: Re: Foia request? 3616 side roof deck?

Ms. Makenta,

I do not believe that the Zoning Administrator keeps the kind of data that you are seeking, at least not in a format that would be searchable to answer your question.

As to your claim of that the permit authorized the violation of your privacy rights, that is an issue that is for the BZA to consider and decide at next week's hearing.

Sincerely,
Maximilian L.S. Tondro | Assistant General Counsel