

**DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT**

January 16, 2018

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**
Response to ANC Sharon Farmer Testimony

Please consider the following Response to ANC Testimony submitted January 9, 2018.

The appeal (#19573) regarding the first revised building permit by DCRA issued in May 2017 for the application filed April 20, 2017 should be upheld. With its decision to approve this permit internally and unilaterally, the ZA usurped the authority not only of the BZA and the Office of Planning, but also of the ANC. When the ZA learned that there would be a significant modification to the approved plan, which the ANC had supported (in a vote that was not unanimous), the ZA was required to take proper and timely steps to bring the chimney cut-in and the side roof deck on the revised plan back before the ANC for consideration. (See Legend on bottom of page 2 of this Response, which refers to Photographic Exhibits at 48B in the record of this case)

By failing to do so, the ZA disenfranchised the ANC. DCRA knew that the permit was issued in error prior to the removal of the roof (April 2017) and prior to the start of framing of the 3rd floor (May 2017), but the agency refused to stop the project as protocol required, with full knowledge that the original plans, which had been considered by the OP, the BZA and the ANC were no longer valid.

Not only did DCRA issue the original permit in error February 2017, but the agency shortly thereafter also issued this 1st amended permit in error. Notwithstanding the highly unorthodox and deceitful manner by which the Applicants (and their representatives) gained Special Exception approval and secured their original building permit, the fact is that the revised design is not what the ANC considered and not what the ANC voted on. The DCRA Zoning Administrator (ZA) did not act appropriately in approving this revised permit internally and without BZA input, and the ZA did not adhere to the procedures required by the Zoning Codes (Title 11).

One cannot be certain if the ANC would have voted for or against the revised design. But the ZA denied the ANC the opportunity to review the revised plan, though they had a right and mandate to review and to weigh in in the proper forum. It is their right to consider the significant design change to the third story

envelope and its ensuing impacts through the modification application that the ZA was supposed to require of the Applicants upon knowledge of the changes to the original BZA approved plans.

There is a pivotal difference between the ZA giving notice to the ANC versus the ZA being required to provide notice to the ANC due to a pending application and case before the BZA. The ZA should not have approved this design change through a belated internal DCRA application in July 2017 or through its May 2, 2017 permit approval, as both of these actions amounted to the ZA circumventing the broad powers of the ANC. The role of the ANC is to encourage the participation of neighbors, to act on behalf of its constituents and to make decisions by resolution. Yet the ANC cannot act without the statutory process being triggered, which the ZA was required to trigger, but refused to do so. The Applicants were required to file a modification of consequence application with the BZA, so that the impacts to adjacent owner--who had already been disenfranchised due to the Special Exception decision date acceleration--could be considered. But the documented chicanery by the Applicants related to several stages of approval for this project should end here, with a BZA decision to uphold this appeal.

Certainly, the Side roof deck is a roof deck subject to the same setback requirement of the upper roof deck. DCRA's definition of a "penthouse" in a manner that doesn't require the setback is not supported by the code. Title 11 Subtitle B 100.2 defines "penthouse" as "*A structure on or above the roof of any part of a building.*" As such, the setbacks of the side roof deck itself (its flooring is a structure) and the guardrail are required. Further, my privacy concerns are valid and should also be given significant weight.

This appeal should be upheld and the BZA should require the ZA to adhere to the statutory modification application process that the ZA circumvented for these Applicants, and that led to the disenfranchisement of the BZA, the ANC and the Pro Se Appellant. DCRA appears to have developed quite a track record of enforcing codes unevenly and disappointing scores of long-term and short-term adjoining property owners across the city who aren't flush with a recent infusion of the ample cash necessary to defend themselves or their property like newly renovating/developer neighbors. But the BZA is supposed to hold DCRA ZA accountable.

BZA Case 19573: Exhibit Image Legend for Part 2 of Motion to Continue Hearing to Reopen Record to Postpone Decision Date and Response to DCRA's Motion to Reopen Record, 9-pages of Images were provided:

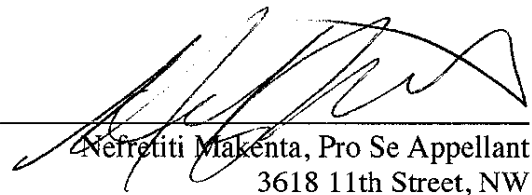
Page	Exact Location	What/Images
Pages 1-3	1st 5 images	Pop-up approved by Special Exception showing that it does not comport with the renderings at Exhibit 66, as required by the BZA's Summary Order. Side wall highly visible from corner onto one-way street
Page 3	2nd image on page	Wide Shot of Double Doors on Side Roof Deck showing just how close the Side Roof Deck is to Appellant's Roof
Page 4	1st image	Parapet wall height measured at 24 1/2-foot height, one element, which clearly necessitated a need for a guardrail
Page 4	2nd image	3-story drop at edge of parapet wall, which the 3'6" guardrail as placed is not enough to prevent falls

Page 5 and 6	All	Side Roof Deck showing roofing membrane material on floor and position relative to adjoining owner windows
Page 7	1st image	Photograph from inside Appellant bedroom showing how the Intervenor would be able to hang over parapet wall and see into windows; also shows the Intervenor's small picture window on 2nd floor, which is under the party parapet wall and past the property line onto Appellant's property by at least 3-inches and is at-risk
Page 7	2nd image	Additional view Intervenor's would have into Appellant's property when standing at their side deck without a setback
Pages 8 & 9		Trash that Intervenor's contractors have thrown onto Appellant's roof due to the Side Roof deck and no setback, which will likely be replaced with cigarettes once the 100s of AirBnB & Bed and Breakfast visitors, etc. inhabit the 3616 Property again as they have for almost 4 years prior to the start of Intervenor's construction

Pro Se Appellant also uploaded this Legend to the BZA as part of her Submission on December 20, 2017. It was Part 3 of the Exhibits, which simply explained the photographs, which had been submitted as Part 2 before 9am on that hearing date. However, Appellant was informed that this Part 3 legend was not entered into the record because it arrived shortly after 9am on the hearing date. Therefore Appellant hereby resubmits this entry. As the photos have already been in the record for weeks and this legend, which simply describes those photos, was previously received by the parties on December 20, 2017, this brief legend does not prejudice any party.

For the foregoing reasons and for the reasons submitted into this record by Pro Se Appellant (as well as her submissions into the record of Cases 19387 and 19510, regarding this same development), Appellant respectfully requests that the BZA uphold this appeal.

Respectfully submitted,



Nerretiti Makenta, Pro Se Appellant
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing RESPONSE TO ANC TESTIMONY was emailed this 16th day of January 2018 upon:

The following parties and counsel appeared in the agency below:

Party

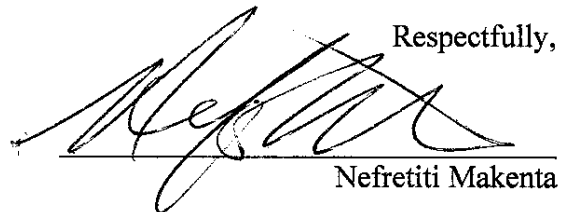
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Respectfully,



Nefretiti Makenta