BEFORE THE BOARD OF ZONING ADJUSTMENT
OF THE DISTRICT OF COLUMBIA

Appeal by B Monroe Ventures LLC ANC 1D
of Zoning Administrator Determination

STATEMENT OF APPELLANT

This Statement of Appeal is submitted on behalf of B Monroe Ventures LLC ("Appellant") to the Board of Zoning Adjustment ("BZA" or "Board") in response to a decision of the Zoning Administrator on July 28, 2017.

The Appellant is proposing to construct two (2) twenty-five-foot-wide flats on the vacant lots located at 1842 Monroe and 1844 Monroe Street, N.W. Subtitle E § 307.1 states, "When a new dwelling or flat is erected that does not share a common division wall with an existing building or a building being constructed together with the new building, it shall have a side yard on each resulting free-standing side." The Appellant e-mailed the Zoning Administrator on May 26, 2017 to request a determination as to whether the Appellant's proposed project would be required to provide a side yard, following permit application comments from a reviewer requiring such a side yard for 1844 Monroe. That email is attached as Exhibit A. The Zoning Administrator determined that the proposed building on 1842 Monroe Street, N.W. is permitted as a matter-of-right, because it will share a common division wall with the adjacent building at 1840 Monroe Street, N.W. However, the Zoning Administrator determined that a side yard is required for 1844 Monroe Street, even though that structure will also share a common division wall with the adjacent building being constructed together with the subject building. The Zoning Administrator's determination e-mail is attached as Exhibit B.

I. JURISDICTION

The Board has jurisdiction over this appeal pursuant to 11-X DCMR §§ 1101.1 & 1101.2. This appeal is timely under 11-Y DCMR § 302.2(a) having been filed within 60 days from the date the Appellant had notice or knowledge of the decision being appealed, or reasonably should have had notice or knowledge of the decision being appealed.[1]

II. STANDING OF APPELLANT

The Appellant owns 1844 Monroe Street, N.W. (Square 2614, Lot 38) (the "Property") and 1842 Monroe Street, NW (Square 2614, Lot 39) (the "Adjacent Property"). Both lots are currently unimproved. The Appellant is proposing to construct a twenty-five-foot wide flat on each lot.

The Zoning Administrator has determined that the proposed building (the "Building") at 1844 Monroe is required to provide a side yard that measures a minimum of five feet (5 ft.), pursuant to 11-E DCMR 307.3. This requirement has forced the Appellant to seek relief from the Board of Zoning Adjustment from this minimum side yard requirement. The Appellant asserts that this interpretation was made in error and that the Zoning Administrator has gone beyond the plain meaning of the language of E-307.3. Appellant signed the contract to purchase these lots in January, 2015, and purchased them in April, 2015. Since then, he has been undergoing planning and design of these row structures, including seeking and receiving HPRB approval. When the Properties were purchased, the then-current interpretation of the subject side-yard provision did not require a side yard for a situation such as this. That interpretation was changed at some point

[1] The decision was made on July 28, 2017. The Appellant knew of the decision or had reason to know on July 28, 2017.

after the adoption of the 2016 Regulations, without public notice.[2] Appellant is therefore "aggrieved" pursuant to 11-Y DCMR § 302.1 and has standing to file this appeal.

III. DESCRIPTION OF THE PROPERTY AND THE PROJECT

The Property is located in the RF-1 Zone. It is a large rectangular lot measuring 3,100 square feet. The Property is current unimproved. The lot is part of a larger A&T Lot which also contains Lot 39 (1842 Monroe Street).

The Property is located in the Mount Pleasant Historic District. This block consists almost entirely of lot-line to lot-line row dwellings, with but 4 or 5 exceptions. The Property fronts on Monroe Street to the north is abutted by a public alley to the south. Abutting the Property to the east are three row dwellings. Abutting the Property to the west is a semi-detached dwelling.

IV. BURDEN OF PROOF

A. Case Law

Consistent with decisions of the District of Columbia Court of Appeals, when interpreting a statute or regulation, the Board will first look to the language of the act, and when the language is unambiguous and does not produce an absurd result, the Board will not look beyond its plain meaning. *Citizens Ass'n of Georgetown v. District of Columbia Bd. of Zoning Adjustment*, 642 A.2d 125, 128 (D.C. 1994) (citations omitted); see also, e.g., *BSA 77 P Street*

[2] The language of the Zoning Regulations cited in this Appeal is not new, and has not changed with the adoption of the 2016 Regulations. Only the interpretation has changed. Even with that change in interpretation, made without notice, the Zoning Administrator has erred in that his interpretation directly conflicts with the plain language of the Regulation.

LLC v. Hawkins, 983 A.2d 988, 995 (D.C. 2009). Regulations, like statutes, are interpreted according to their plain language. *Walter Reed Mews Ltd. Ptnr. v. Wilkins,* 2006 WL 3043114, 5 (D.C.Super. 2006). The Board will not add language to a regulation, because "[t]o supply omissions transcends the judicial function." *District of Columbia v. Brookstowne Community Development Co*., 987 A.2d 442, 447 (D.C. 2010), quoting *Allman v. Snyder*, 888 A.2d 1161, 1169 (D.C. 2005). "At bottom, this case is one of statutory interpretation, and 'we begin with the statute's plain language. If the statutory language is unambiguous, we may as well end there.'" *Tangoren v. Stephenson*, 977 A.2d 357, 360 (D.C. 2009), quoting *1836 S Street Tenants Ass'n v. Estate of B. Battle,* 965 A.2d 832, 838 (D.C. 2009).

B. Decision goes beyond the Plain Meaning of the Regulation

The Zoning Administrator erred in his interpretation of 11-E DCMR § 307.1 because he looked beyond its plain meaning. Subtitle E § 307.1 states, that "when a new dwelling or flat is erected that does not share a common division wall with an existing building or a building being constructed together with the new building, it shall have a side yard on each resulting free-standing side." The Zoning Administrator has interpreted this provision to mean that the proposed building at 1844 Monroe will be required to provide a side yard on its western lot line because it will not share a common division wall with the property to the west at 1850 Monroe Street.

However, this interpretation goes beyond the plain meaning of the regulation. A critical read of 11-E DCMR § 307.1 requires that a building meet the prerequisite condition ("does *not* share a common division wall with an existing building or a building being constructed together…") before it can be subject to the requirement at the end of the provision. The new flat being erected at 1844 does indeed share a common division wall with a building being

constructed together with it (the 1842 building). Therefore, it cannot be subject to the resulting requirement, as it does *not* meet the prerequisite condition.

Both 1842 and 1844 will indeed share **a** common division wall with **an** existing building or **a** building being constructed together with them. Therefore, neither one can be subject to the resulting side yard requirement. In other words, there is no requirement that the new building share a common division wall with **two** buildings. The plain meaning provides that it need only be attached to a single building, and if it is attached to **a** building, then it is simply not subject to this provision at all.

For this reason, the appeal should be GRANTED and the decision of the Zoning Administrator should be REVERSED, and no side yard should be required for the Subject Property.

Respectfully submitted,

Martin P. Sullivan