ANTONOPLOS & ASSOCIATES
ATTORNEYS AT LAW
1725 DeSales Street, NW, Suite 600
Washington, DC 20036
Phone: (202)-803-5676
Fax: (202)-803-5677
Email: JohnL@AntonLegal.com
www.AntonLegal.com

April 25, 2018

Board of Zoning Adjustment
District of Columbia
441 4th Street, S.W., Suite 200S
Washington, D.C. 20001

Dear Members of the Zoning Board of Adjustment:

The attached comprises the filing of an appeal styled Appeal of Hilary Dove and Ranieri Cavaceppi, Pursuant to 11 D.C.M.R. Subtitle Y, § 302, Regarding Decision of the Zoning Administrator, Department of Consumer and Regulatory Affairs, as to Placement of Self-Contained Air Conditioning Units in Side Yard (the "Appeal").

The filing contains the following documents: (1) a letter from Ms. Dove and Mr. Cavaceppi authorizing me and the law firm of Antonoplos & Associates, pursuant to 11 D.C.M.R., Subtitle Y, Chapter 3, § 302.10 to represent them for purposes of the Appeal, (2) a statement detailing each of the required items of information required by 11 D.C.M.R., Subtitle Y, Chapter 3 § 302.12 (a-k), and a brief in support of the Appeal with exhibits.

If you need any further information from Ms. Dove and Mr. Cavaceppi or additional materials for the Appeal, please do not hesitate to contact me.

Respectfully submitted,

John C. Letteri

Hillary P. Dove
Ranieri M. Cavaceppi
4404 Albemarle Street, N.W.
Washington, D.C.
April 24, 2018

Board of Zoning Adjustment
District of Columbia
441 4th Street, S.W., Suite 200S
Washington, D.C. 20001

Dear Members of the Zoning Board of Adjustment:

We are writing pursuant to 11 D.C.M.R., Subtitle Y, Chapter 3, § 302.10 to inform you that we have authorized John C. Letteri, with the law firm of Antonoplos & Associates, to represent us for purposes of the appeal that we have filed styled Appeal of Hilary Dove and Ranieri Cavaceppi, Pursuant to 11 D.C.M.R. Subtitle Y, § 302, Regarding Decision of the Zoning Administrator, Department of Consumer and Regulatory Affairs, as to Placement of Self-Contained Air Conditioning Units in Side Yard.

Mr. Letteri is authorized to represent us with respect to all aspects of our appeal.

Respectfully submitted,

Hilary P. Dove

Ranieri M. Cavaceppi

BEFORE THE DISTRICT OF COLUMBIA ZONING BOARD OF ADJUSTMENT

Appeal of Hilary Dove and Ranieri Cavaceppi Pursuant to 11 D.C.M.R. Subtitle Y, § 302, Regarding Decision of the Zoning Administrator, Department of Consumer and Regulatory Affairs As to Placement of Self-Contained Air Conditioning Units in Side Yard	)	Appeal No. _____

APPEAL OF HILARY DOVE AND RANIERI CAVACEPPI
STATEMENTS REQUIRED BY TITLE 11, SUBTITLE Y, § 302.12

Per Title 11, Subtitle Y, Section 302.12 of the Zoning Board of Adjustment Rules of Practice and Procedure, Hilary Dove and Ranieri Cavaceppi respectfully state as follows:

For purposes of Section 302.12(a), the name of the administrative official whose decision is the subject of their appeal is Rohan Reid, Program Analyst, Office of the Zoning Administrator, Department of Consumer and Regulatory Affairs, Government of the District of Columbia.

For purposes of Section 302.12(b), the administrative decision appealed is one that Mr. Reid made on April 6, 2018 via email to Ms. Dove and Mr. Cavaceppi, and a copy of that email decision is attached hereto as Ex. 1.

For purposes of Section 302.12(c), the square and lot number for the property owned by Ms. Dove is Square 1590, Lot 0058. The property that is the subject of the appeal is owned by Emma Chanlett-Avery and it is located in Square 1590, Lot 0043. Both properties are in zone district R-1-B.

For purposes of Section 302.12(d), the name and address of the owner of the property that is the subject of the appeal is Emma Chanlett-Avery, 4400 Albemarle Street, N.W., Washington, D.C. 20016.

For purposes of Section 302.12(e), the date upon which Ms. Dove and Mr. Ranieri first had notice of the decision being appealed is April 6, 2018, when they received Mr. Reid's email on April 6, 2018.

For purposes of Section 302.12(f)(2), Ms. Dove and Mr. Cavaceppi have standing to appeal because the property they share at 4404 Albemarle Street, N.W., Washington, D.C. 20016, will be adversely affected by Mr. Reid's decision. As more fully explained in the accompanying Brief on Appeal, that decision permits the placement of three large air conditioning units in a side yard that separates their home from Ms. Chanlett-Avery's home. Ms. Dove and Mr. Cavaceppi are aggrieved because the placement and operation of those air conditioning units violates District of Columbia zoning rules and regulations, and the noise from those units has and will continue to interfere with their ability to quietly enjoy their property.

For purposes of Section 302.12(g), the issues on appeal are (1) whether the placement of the air conditioning units in the side yard violates the 8-foot setback rule required for side yards in zone R-1-B, (2) whether the placement of the air conditioning units in the side yard violates the 2-foot rule for self-contained air conditioners found in Title 11, Subtitle B, § 323.9, and (3) whether the operation of the air conditioning units in the side yard causes noise in excess of the 60 decibel limit in Title 20, § 2701.1.

For purposes of Section 302.12(h), Ms. Dove and Mr. Cavaceppi respectfully refer the Zoning Board of Adjustment to their Brief on Appeal, which contains all of the statements, information, plans, photographs and other exhibits that they may wish to offer into evidence.

For purposes of Section 302.12(i), Ms. Dove and Mr. Cavaceppi state that they will not be relying upon any expert witnesses.

For purposes of Section 302.12(j), the following is a summary of the testimony that Ms.

Dove and Mr. Cavaceppi will give in this proceeding. Ms. Dove and Mr. Cavaceppi will testify about their efforts to investigate the permits and drawings related to the placement of the air conditioning units in the side yard, their discussions with the construction workers on site regarding the placement of the units, their efforts to bring the placement of the units in the side yard to the attention of officials of the DCRA and others, and the noise and other interference that the units are causing to their quiet enjoyment of their property. Ms. Dove and Mr. Cavaceppi also will testify to authenticate the emails, letters, photographs and other materials included as exhibits to their appeal.

Dated: April 25, 2018

Respectfully submitted,

John C. Letteri (DC Bar No. 415377)
Antonoplos & Associates
1725 DeSales St., NW, Suite 600
Washington, DC 20036
Office: (202) 803-5676
Fax: (202) 803-5677
johnl@antonlegal.com
Attorneys for Hilary Dove and Ranieri Cavaceppi

CERTIFICATE OF SERVICE

I hereby certify that on this if this appeal is accepted, I will cause a copy of the foregoing to be delivered by certified mail – return receipt requested on the following:

Rohan Reid
Program Analyst
Office of the Zoning Administrator
Department of Consumer and Regulatory Affairs
District of Columbia
1100 4th Street, S.W., Suite E340
Washington, D.C. 20024

Emma Chanlett-Avery
4400 Albemarle Street, N.W.
Washington, D.C. 20016

Advisory Neighborhood Commission 3E
Jonathan Bender, Chair
4411 Fessenden Street, N.W.
Washington, D.C. 20016

John C. Letteri

EXHIBIT 1

From: Hilary Pell Dove <hilarypelldove@yahoo.com>
Date: April 6, 2018 at 12:46:40 PM EDT
To: Jerry Malitz <malitzj@yahoo.com>
Cc: Ranieri Cavaceppi <rabbiemc@yahoo.com>
Subject: Fwd: 4400 Albemarle Street NW requested info.

This just came in.

Sent from my iPhone

Begin forwarded message:

From: "Reid, Rohan (DCRA)" <rohan.reid@dc.gov>
Date: April 6, 2018 at 12:40:30 PM EDT
To: Hilary Dove <hilarypelldove@yahoo.com>, Ranieri Cavaceppi <rabbiemc@yahoo.com>
Cc: "Sullivan, Donald (DCRA)" <Donald.Sullivan@dc.gov>, "Ehrhardt, Greg (SMD 3E01)" <3E01@anc.dc.gov>, "Bailey, Christopher (DCRA)" <christopher.bailey@dc.gov>, "Beeton, Kathleen A. (DCRA)" <kathleen.beeton@dc.gov>, "Dickey, LaShawn (DCRA)" <lashawn.dickey@dc.gov>, "Whitescarver, Clarence (DCRA)" <clarence.whitescarver@dc.gov>, "jonbender@gmail.com" <jonbender@gmail.com>, "Tibbs, Breyana (DCRA)" <Breyana.Tibbs@dc.gov>
Subject: RE: 4400 Albemarle Street NW requested info.

Good afternoon Mrs. Dove and Mr. Cavaceppi,

Thank you for the follow up email and the additional information you've shared from your research. Please accept my apologies for the delayed response. During my absence from the office, my colleagues conducted further research and worked to schedule an inspection of the property. In order to make a zoning compliance determination, the heights of the mechanical units were needed. Based on the result of the recent inspection, the mechanical units are less than four feet in height, from the grade. As such, the mechanical units would be allowed to occupy any yard on the property and would not be subject to setback requirements; therefore, the relocation of the mechanical units from the rear of the property to the side yard, is in compliance with the zoning regulations.

We also determined from our analysis that the mechanical units are exempt from the zoning regulations code sections that you referenced, Subtitle B, Sections 323, 325, and 327. The Zoning Administrator has consistently interpreted 'projections' to mean 'above grade and physically attached to the building' and not 'at grade level'. An example of a projecting element would be an above grade AC window unit. Additionally, the Office of the Zoning Administrator staff has also consistently applied this longstanding interpretation of projections.

Subtitle B, Sections 325 and 327, apply to Transition Zones. The subject property, 4400 Albemarle Street, NW, is not designated as a Transition Zone and therefore, exempt from those provisions. Further, if the property had a Transition Zone designation, the mechanical units would still be exempt from any yard setback requirements, for the reason in the above paragraph regarding projections.

DCRA's Inspections and Compliance Administration informed me that their analysis of the concern, permit information, and inspection result, determined that the placement of the mechanical units in the side yard will not create any building code violations.

At this time, the Office of the Zoning Administrator has determined that there is no cause for zoning enforcement actions. We understand that the information above may not address all of your concerns; however, we do hope that it has been helpful in understanding how the zoning aspects of this project were analyzed. Thanks again for taking the time to contact DCRA.

Regards,

Rohan Reid | *Program Analyst, Office of the Zoning Administrator*
Department of Consumer and Regulatory Affairs
Government of the District of Columbia

rohan.reid@dc.gov | 1100 4th Street SW, Suite E340, Washington, DC 20024
main: 202.442.4400 | desk: 202.442.4648
inspections: 202.442.7867 | dcra.dc.gov

dcra

BEFORE THE DISTRICT OF COLUMBIA ZONING BOARD OF ADJUSTMENT

Appeal of Hilary Dove and Ranieri Cavaceppi Pursuant to 11 D.C.M.R. Subtitle Y, § 302, Regarding Decision of the Zoning Administrator, Department of Consumer and Regulatory Affairs As to Placement of Self-Contained Air Conditioning Units in Side Yard	)	Appeal No. _____

APPEAL OF HILARY DOVE AND RANIERI CAVACEPPI

COME NOW Hilary Dove and Ranieri Cavaceppi, by and through undersigned counsel and pursuant to Subtitle Y, Section 302 of the Board of Zoning Adjustment Rules of Practice and Procedure, and file this their timely appeal of the April 6, 2018 decision by Rohan Reid, Program Analyst, Office of Zoning Administrator, Department of Consumer and Regulatory Affairs, Government of the District of Columbia, that found there is no cause for a zoning enforcement action concerning the placement of three large, self-contained air conditioning compressor units in a three-foot space in a side yard that runs between their home at 4404 Albemarle Street, N.W., Washington, D.C., Lot 1590/Square 0058, ("Dove Lot") and the home next door, located at 4400 Albemarle Street, N.W., Washington, D.C., Lot 1590/Square 0043 ("Chanlett-Avery Lot"). A copy of Mr. Reid's decision is attached hereto as Exhibit 1.

The side yard between the Dove Lot and the Chanlett-Avery Lot is 11 feet wide, running east to west from Albemarle street to the rear of both lots. It is located on the south side of the Dove Lot and the north side of Chanlett-Avery Lot. Eight feet of the eleven-foot side yard is within the Dove Lot, and 3 feet is within the Chanlett-Avery Lot. The original permit obtained in September 2017 for an extensive renovation of the home on the Chanlett-Avery Lot (Permit No. B1711060) included electrical drawings labeled E001 and E002 approved by DCRA which

showed placement of air-conditioning compressor units in the rear yard of that lot, where there is ample space for the three units. In addition, the drawing labeled DDOE001 specifically acknowledges the 8-foot setback for the side yard that is the subject of this appeal. Copies of the original permit and realted architectural drawings are attached hereto as Exhibit 2. Ms. Dove and Mr. Cavaceppi had no complaints with respect to any of the planned renovation or the original planned location for the units.

However, on March 6, 2018, without any notice to Ms. Dove or Mr. Cavaceppi, DCRA issued a new permit (Permit No. B1805695) which purports to amend the original Permit No. B1711060 to allow *inter alia* the relocation of three large self-contained air conditioning units at grade level in the three-foot space of the Chanlett-Avery Lot portion of the side yard between the two properties. A copy of the March 6, 2018 permit is attached hereto as Exhibit 3.

Upon learning of the planned relocation of the units, Ms. Dove and Mr. Cavaceppi quickly contacted Mr. Reid on March 19, 2018 prior to installation of the units, to request a review of the proposed relocation on grounds that the new location violated at least the eight-foot setback rule for the neighborhood and the two-foot set back rule for projecting self-contained air conditioning units. On April 6, 2018, Mr. Reid decided that because the air conditioning units were less than four feet in height, they were exempt from the setback rules, and found no cause for a zoning enforcement action.

At the time of the filing of this appeal, the three compressor units already are in place, and the width of one of them takes up the entire three feet of space between the side of the home in the Chanlett-Avery Lot, and a fence that runs along the border of the two lots in the side yard erected by Ms. Dove and Mr. Cavaceppi. The unit abuts both the Chanlett-Avery home and the Dove fence, and is literally squeezed into that three-foot space with no room to spare, as the

photographs attached hereto as Exhibit 4 clearly demonstrate. In addition, the noise generated by the unit already is interfering with Ms. Dove and Mr. Cavaceppi's quiet enjoyment of their property.

For these reasons, Ms. Dove and Mr. Cavaceppi now submit this appeal of Mr. Reid's decision. The grounds therefore are as follows. First, the placement of the units in the side yard violates the 8-foot setback rule for the neighborhood and specifically acknowledged in the architectural drawing entitled "Erosion Control Plan" and labeled DDOE001. See Ex. 2. Second, the placement of the units violates the 2-foot setback rule for self-contained air conditioning units projecting from a building. Third, the noise generated by the three units may well exceed the permissible 60-decibel daytime limit and the 55-decibel nighttime limit for the neighborhood. See 20 D.C.M.R. § 2701.1.

Fourth, in his April 6, 2018 decision, Mr. Reid incorrectly found that as long as the units were less than four feet in height, the setback rules did not apply, and the units could be placed in any open yard. Mr. Reid apparently relied on D.C.M.R. Title 11, Subtitle B, Chapter 3, § 324.1(a), which contains the four-foot exemption. However, § 324.1(a) only applies to "structures," which is defined in D.C.M.R. Title 11, Chapter 1, § 199.1 to specifically exclude "mechanical equipment." Large air conditioning compressor units are "mechanical equipment" (see 20 D.C.M.R. §2801.2) and they are not "structures" for purposes of the 4-foot exemption from the setback requirements.[1] As a result, Mr. Reid's decision is incorrectly based on the four-foot exemption in § 324.1(a) and placement of the air conditioning units in violation of the setback rules therefore cannot stand.

[1] Section 2801.2 states in part that "[n]oise resulting from the use or operation of any air-conditioning, refrigerator, heat pump, fan, swimming pool equipment or other mechanical equipment . . . shall be prohibited in excess of sixty (60) db(A) . . . ."

Ms. Dove and Mr. Cavaceppi respectfully submit that the Zoning Board of Adjustment should grant their appeal, reverse Mr. Reid's decision, find that placement of the air conditioning units does indeed violate the District of Columbia's zoning rules and regulations, issue a stop work order for the relocation of the units to the side yard, and require placement of the units in the rear yard of the Chanlett-Avery Lot per the original building permit and architectural drawings that DCRA approved in September 2017.

I. FACTUAL BACKGROUND

On October 23, 2017, Ms. Dove was notified by a text message from Ms. Chanlett-Avery that she planned some additions and renovations of her home and property, and that work would begin in November 2017. Ms. Chanlett-Avery did not provide copies of any of the drawings or permit for the planned work, nor were any of them posted. Ms. Dove obtained a copy of the original drawings and permit through a Freedom of Information Act request. See Ex. 2.

The approved architectural drawings for the Chanlett-Avery Lot renovation project included two drawings for electrical work, one entitled "Electrical – First Floor Plan" and labeled E002, and a second entitled "Electrical – Basement/Crawl Space Plan" and labeled E001. Each of these drawings plainly shows placement of the air compressor units "relocated" to the rear of the Chanlett-Avery Lot with ample space for them, and nowhere near the side yard. Id. Further, and as previously noted, the drawing entitled "Erosion Control Plan" and labeled DDOE001 acknowledges the 8-foot setback for the side yard bordering the Dove Lot and the Chanlett-Avery Lot. Id. Neither Ms. Dove nor Mr. Cavaceppi had any problems with the planned renovation.

However, in February 2018, Ms. Dove noticed workers from the Chanlett-Avery Lot renovation project were bringing materials to the side yard, working there, and using the Dove

Lot portion of the side yard to work and store materials. When Ms. Dove inquired of the workers what they were doing, she learned from them that they were thinking of installing the air conditioning units in the side yard. The owner of the Chanlett-Avery Lot never notified or otherwise informed Ms. Dove or Mr. Cavaceppi of this change, which was materially different from the original planned placement of the units. Only after DCRA issued the March 6, 2018 permit that purportedly allows the relocation of the units to the side yard did the construction company send an email to Ms. Dove informing her of the change.

Through a Freedom of Information Act request, Ms. Dove and Mr. Cavaceppi were able to obtain a copy of a permit issued by DCRA on January 31, 2018, entitled "Air Conditioning Permit, Permit No. M1801266." A copy of this permit is attached hereto as Exhibit 5. The permit contains no text in the "Description of Work" section, nor any other description of work. The permit describes one air conditioning unit, a 36,000 BTU Carrier model No. 38mgqf36. The permit provides no specific location for the unit, other than to state "ground." There is no discussion of placement of additional units. The permit states that it is "associated with the building permit number b1711060," which is the same permit number reflected on the approved architectural drawings. See Ex. 2. There is no indication on Permit No. M1801266 that it alters or amends the original building permit, which clearly indicates placement of the units in the rear yard of the Chanlett-Avery Lot.

Ms. Dove and Mr. Cavaceppi also obtained a copy of a second permit DCRA issued two months later, on March 6, 2018. This second permit, Building Permit No. B1805695, contains the following cryptic statement in the Description of Work section: "Revision to B171180 [the original Chanlett-Avery building permit] change window size, ac location, boiler vents." See Ex. 3. The permit provides no specifics on where the revised "ac location" would be. Again,

neither Ms. Dove nor Mr. Cavaceppi received any type of prior notice regarding this change in plans, and only have been able to obtain a copy of the March 6, 2018 permit, not any of the paperwork or backup documentation, if any, that supported the permit application.[2]

On March 19, 2018, Mr. Cavaceppi contacted Mr. Reid via email. Mr. Cavaceppi requested an official review of the revised location for the air conditioning units. He stated that "we believe an investigation is warranted under 'uses of property that may be inconsistent with zoning regulations' and 'expansion and/or modification of existing structures.'" A copy of Mr. Cavaceppi's email is attached hereto as Exhibit 6.

On March 20, 2018, Mr. Reid replied that he would conduct research on the permits issued to the property "to determine if the location of the compressors were approved correctly" by the Office of the Zoning Administrator. Mr. Reid stated that "[i]n general, HVAC units that are less than 4 feet in height from the grade, are allowed to occupy any open space on the property. If the units in question are less than 4 feet, I do believe the conclusion will be made that the new location is in compliance with the zoning regulations." A copy of Mr. Reid's email is attached hereto as Exhibit 7.

Later on March 20, 2018, Ms. Dove wrote an email to Mr. Reid thanking him for his prompt reply and enclosing a photograph of just how small a space existed in the Chanlett-Avery Lot portion of the side yard for the placement of the air conditioning units. Ms. Dove noted that the piping for the units was in excess of 4 feet above grade. Ms. Dove also noted that there did not appear to be any room to service the units, given the complete lack of room in the 3-foot portion of the side yard in Chanlett-Avery Lot for anything other than the units themselves. A copy of Ms. Dove's email is attached hereto as Exhibit 8.

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[2] It should be noted that the DCRA has had to take action twice before and issue stop work orders with respect to the Chanlett-Avery Lot, once on June 4, 2013 and again on April 4, 2018.

On March 22, 2018, Mr. Reid sent an email to Ms. Dove in which he explained that his office was still waiting for copies of the relevant permits and documents, that he would be out of the office until April 2, 2018, and that, in the interim, his colleague, Mr. Tarek Bolden would research the issues of concern. A copy of Mr. Reid's email is included in Exhibit 8.

On March 31, 2018, Ms. Dove wrote an email to Donald Sullivan, a Supervisor in DCRA's office of Illegal Construction, Inspections and Compliance. Ms. Dove outlined her concerns with the placement of the air conditioning units, attached photographs depicting the problems, and requested a DCRA inspection of the installation. A copy of Ms. Dove's March 31, 2018 email is attached hereto as Exhibit 9. Mr. Sullivan replied that an inspection would take place within 48 hours, and, on April 4, 2018, a DCRA inspector took measurements at the site.

On April 5, 2018, following the inspection, Ms. Dove followed up with an email to Breyana Tibbs in Mr. Sullivan's office, again raising concern that the Chanlett-Avery placement of the air conditioning units in the side yard violated the 8-foot setback rule and the 2-foot setback rule for self-contained air conditioning units projecting from a building. A copy of Ms. Dove's April 5, 2018 email to Ms. Tibbs is attached hereto as Exhibit 10.

On April 6, 2018, Mr. Reid issued his decision. He found that because the units were less than 4 feet in height, they were exempt from the setback rules, and there was no cause for a zoning enforcement action. See Ex. 1. Plainly aggrieved by Mr. Reid's decision per Title 11, Subchapter Y § 302.1, Ms. Dove and Mr. Cavaceppi are filing this appeal of Mr. Reid's decision well within the 60-day period permitted for appeals. Id. § 302.2.

II. GROUNDS FOR APPEAL

The grounds for this appeal are as follows. First, the Dove Lot and Chanlett-Avery Lot are within an R-1-B Residential Zone. The District of Columbia Zoning Handbook provides that the purposes of the R-1-B zone are to "[p]rotect quiet residential areas now developed with detached dwellings" and to "[s]tabilize the residential areas and promote a suitable environment for family life."

To ensure that these goals are met, the Zoning Handbook requires certain setbacks for front yards and side yards, among others. For side yards, defined as a "yard between any portion of a building or other structure and the adjacent side lot line, extending for the full depth of the building or structure," the required setback is eight feet. See D.C.M.R. Title 11, Subtitle D, Chapter 3, § 307.1 ("A minimum side yard of eight feet (8 ft.) shall be provided in the R-1-A, R-1-B, and R-2 zones"). The lots at issue here are in an R-1-B zone.

There is not eight inches, let alone eight feet between one of the installed air conditioning units and the Chanlett-Avery Lot and Dove Lot property line in the side yard. In fact, a picture taken by Ms. Dove on April 22, 2018 and included in Exhibit 4, shows a portion of a two-by-four piece of wood, apparently put in place to either anchor one of the installed air conditioning units or to prevent it from sinking, that is sitting in part on the Dove Lot portion of the side yard.

This is a clear violation of the 8-foot setback requirement, which is not unknown to the owner of the Chanlett-Avery Lot. In fact, the original architectural drawings approved by DCRA acknowledge this rule in the drawing labeled DDOE001. See Ex. 2. In his April 6, 2018, decision, Mr. Reid nevertheless dismissed the setback requirement by stating that because the units are less than four feet in height above the grade, they can be placed in any yard on the

property. See Ex. 1. However, Mr. Reid cited to no rule, regulation or case in support of this position.[3]

Moreover, the noise from just one of the units may well exceed the 60-decibel daytime limit and the 55-decibel nighttime limit established for the neighborhood (See 20 D.C.M.R. § 2701.1), interfering with the quiet enjoyment of the Dove Lot in direct contradiction of the stated purposes of the 8-foot setback rule to protect quiet residential areas and to promote a suitable environment for family life.

In addition to violating the 8-foot setback rule, the installation of the air conditioning units in the side yard also violates the rule governing self-contained air conditioners that project from a building. Per D.C.M.R., Title 11, Subtitle B, Section 323, entitled "Projections Into Required Open Spaces," a "self-contained air conditioner may project into any required yard or court a distance not to exceed two feet (2 ft.)." Id. § 323.9.

Here, the installed units project more than two feet into the Chanlett-Avery Lot portion of the side yard between the two properties. In fact, one of the installed units takes up the entire width of the three feet of space available in the Chanlett-Avery Lot portion of the side yard. Despite the plain language of Subtitle B, Section 323.9, Mr. Reid in his April 6, 2016 decision stated that this section applies only to "projections" that "'are above grade and physically attached to the building,'" and not 'at grade level,'" such as an "above grade AC window unit." See Ex. 1. Mr. Reid's decision again provided no citation to a rule, regulation or case for this

[3] D.C.M.R. Title 11, Subtitle D, Chapter 3, § 307.5 provides that "[f]or a building subject to a side yard requirement but which has an existing side yard of less than eight feet (8 ft.), an extension or addition may be made to the building; provided, that the width of the existing side yard shall not be decreased; and provided further, that the width of the existing side yard shall be a minimum of five feet (5 ft.)." An extension of more than two feet into a three-foot space is not permissible.

position. Mr. Reid stated that because the April 5, 2018 inspection of the property showed that the unit then installed was less than four feet above grade, it could be placed in any open yard.

The Definitions and Glossary Section of the Zoning Handbook do not contain definitions for either a "projection" or a "self-contained air conditioner." However, a simple Google search of the term "self-contained air conditioner" returns photographs and advertisements for precisely the type of air conditioning compressor unit currently installed on the Chanlett-Avery Lot. In addition, a review of the photographs among the exhibits to this appeal (see, e.g., Exhibit 4) show that the compressor units both project into the side yard and are physically attached to the Chanlett-Avery home by a series of coils, piping and electrical connections. Moreover, the coils, piping and electrical connections exceed four feet in height.

In addition, Mr. Reid's entire decision apparently is based on the four-foot height exemption contained in D.C.M.R. Title 11, Subtitle B, Chapter 3, § 324.1(a), which states in pertinent part as follows: "A structure, not including a building no part of which is more than four feet (4 ft.) above the grade at any point, may occupy any yard required under the provisions of this title."

Critically, § 324.1(a) only applies to "structures," which is defined in Title 11, Chapter 1, §199.1 to specifically exclude "mechanical equipment." The full definition of the term "Structure" is as follows:

> Structure - anything constructed, including a building, the use of which requires permanent location on the ground, or anything attached to something having a permanent location on the ground and including, among other things, radio or television towers, reviewing stands, platforms, flag poles, tanks, bins, gas holders, chimneys, bridges, and retaining walls. *The term structure shall not include mechanical equipment*, but shall include the supports for mechanical equipment. Any combination of commercial occupancies separated in their entirety, erected, or maintained in a single ownership shall be considered as one (1) structure. (emphasis added).

Large air conditioning compressor units surely are "mechanical equipment" (see 20 D.C.M.R. §2801.2) and they are not "structures" for purposes of the 4-foot exemption from the setback requirements. Mr. Reid's reliance on the four-foot exemption in § 324.1(a) is simply wrong.

For these reasons, Ms. Dove and Mr. Cavaceppi submit that the current placement of the air conditioning units violates both the eight-foot setback requirement and the two-foot rule in Subtitle B, Section 323.9, and Mr. Reid's decisions to the contrary should be reversed and set aside.

III. CONCLUSION

Wherefore, for the foregoing reasons, Ms. Dove and Mr. Cavaceppi respectfully submit that the Zoning Board of Adjustment should (1) reverse Mr. Reid's April 6, 2018 decision, (2) find that placement of the air conditioning units in the Chanlett-Avery portion of the side yard violates the zoning regulations of the District of Columbia, (3) issue a stop work order, and (4) require placement of the air conditioning units in the rear yard of the Chanlett-Avery Lot in accord with the original Permit No. B1711060 and architectural drawings approved by DCRA in September 2017.

Dated: April 25, 2018

Respectfully submitted,

John C. Letteri (DC Bar No. 415377)
Antonoplos & Associates
1725 DeSales St., NW, Suite 600
Washington, DC 20036
Office: (202) 803-5676
Fax: (202) 803-5677
johnl@antonlegal.com
Attorneys for Hilary Dove and Ranieri Cavaceppi

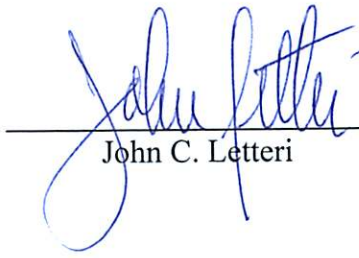
CERTIFICATE OF SERVICE

I hereby certify that on this if this appeal is accepted, I will cause a copy of the foregoing to be delivered by certified mail – return receipt requested on the following:

Rohan Reid
Program Analyst
Office of the Zoning Administrator
Department of Consumer and Regulatory Affairs
District of Columbia
1100 4th Street, S.W., Suite E340
Washington, D.C. 20024

Emma Chanlett-Avery
4400 Albemarle Street, N.W.
Washington, D.C. 20016

Advisory Neighborhood Commission 3E
Jonathan Bender, Chair
4411 Fessenden Street, N.W.
Washington, D.C. 20016



John C. Letteri