

DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT
441 4th Street, N.W.
Washington, D.C. 20001

Appeal by Hilary Dove and Ranieri Cavaceppi

BZA Appeal No. 19777

**D.C. DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS’
PRE-HEARING STATEMENT**

The D.C. Department of Consumer and Regulatory Affairs (DCRA) respectfully requests that the Board of Zoning Adjustment (Board) deny this appeal.

Appellant Hilary Dove and Ranieri Cavaceppi (collectively, Appellants) allege that the Zoning Administrator erred when he permitted Property Owner Emma Chanlett-Avery to place air-conditioning units in the side yard of her property located at 4400 Albemarle Street, N.W. (Property). The Zoning Administrator correctly determined that the air-conditioning units could be placed in the side yard of the Property because the air-conditioning units are less than four feet in height.

Factual and Procedural Background

On October 31, 2017, Emma Chanlett-Avery, the property owner of 4400 Albemarle Street, N.W. (Property) obtained building permit B1711060 to construct a new two-story addition at the rear of the home and a rear deck. (Exhibit 1- Building Permit, Oct. 31, 2017.) A few months later, on March 6, 2018, Ms. Chanlett-Avery obtained a revised building permit B1805695 to change the “window size, ac location, [and] boiler vents.” (Exhibit 2- Building Permit, Mar. 6, 2018.) The air-conditioning units would be moved from the rear yard to the side yard adjacent to Appellant’s property.¹ On March 19, 2018, Mr. Cavaceppi sent an e-mail informing DCRA’s Office of Zoning Administration that Ms. Chanlett-Avery’s “new plans allow for 3 different compressor units” and could not understand how DCRA would allow “compressors on 3 feet of space immediately adjacent to [Appellant’s] property lines, when [Ms. Chanlett-Avery] has “three other sides of ample yard space?!”² The following day, on March 20, 2018, Appellants sent an e-mail to the Office of Zoning Administration stating that Ms. Chanlett-

¹ BZA 19777- Exhibit 2B at Exhibit 6.

² BZA 19777- Exhibit 2B at Exhibit 6.

Avery is “attempting to put 3 compressors on a 36-inch wide strip of land.”³ In response, the Office of Zoning Administration 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.”⁴

On April 6, 2018, the Office of Zoning Administration informed Appellants that “following a recent inspection, the air conditioners were less than four feet in height, from the grade. As such, the mechanical units [are] 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.”⁵ Moreover, the Office of Zoning Administration determined that “the mechanical units are exempt from the zoning regulations code sections that [Appellants] referenced, [namely,] 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.”⁶ Lastly, Appellants were informed that “Subtitle B, Sections 325 and 327, apply to Transition Zones. The subject property, 4400 Albemarle Street, N.W. is not designated as a Transition Zone and therefore, exempt from those provisions.”⁷

Following the Zoning Administrator’s April 6, 2018 determination, Appellants filed this appeal on April 25, 2018.⁸

Argument

Appellants allege that the Zoning Administrator erred because (1) Ms. Chanlett-Avery was permitted to install air-conditioning units in her side yard in violation of the eight foot setback rule; and (2) the placement of the air-conditioning units violates the two foot setback rule for self-contained air-conditioning units projecting from a building.

³ BZA Appeal 19777- Exhibit 2B at Exhibit 8.

⁴ BZA Appeal 19777- Exhibit 2B at Exhibit 8.

⁵ BZA Appeal 19777- Exhibit 2A at Exhibit 1.

⁶ BZA Appeal 19777- Exhibit 2A at Exhibit 1.

⁷ BZA Appeal 19777- Exhibit 2A at Exhibit 1.

⁸ BZA Appeal 19777- Exhibit 2A at Exhibit 1.

I. The air-conditioning units may occupy the side yard of 4400 Albemarle Street, N.W. because these units are less than four feet tall.

The Zoning Administrator correctly determined that the air-conditioning units may occupy the side yard of 4400 Albemarle Street, N.W. The 2016 Zoning Regulations state that “a minimum side yard of eight feet (8 ft.) shall be provided in the R-1-A, R-1-B, and R-2 zones.”⁹ Moreover, every part of a yard shall be open and unobstructed to the sky from the ground up except “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.”¹⁰ The Zoning Administrator’s position is that after a mechanical structure is affixed to the ground it becomes a structure that is subject to 11-B DCMR § 324.1. Since the subject air-conditioning units are structures less than four feet above grade, these air-conditioning units may occupy the side yard of 4400 Albemarle Street, N.W.

II. The Zoning Administrator correctly determined that the air-conditioning units do not violate the two-foot setback rule.

The air-conditioning units located in the side yard of 4400 Albemarle Street, N.W. are not subject to the two-foot setback rule for self-contained air-conditioning units because the air-conditioning units are not “projections,” and the Property is not located in a transition zone.

Appellants argue that the installation of the air-conditioning units in the side yard violate the regulation governing self-contained air conditioners that project from a building.¹¹ Appellants reference 11-B DCMR § 323, entitled “Projections Into Required Open Spaces,” which states, “a self-contained air conditioner may project into any required yard or court a distance not to exceed two feet.”¹² However, that provision pertains to projections and encroachments that may extend into an open area such as, cornices, eaves, awnings, skylights, and other various ordainments that may extend from the original building. 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

⁹ 11-D DCMR § 307.1.

¹⁰ 11-B DCMR § 324.1.

¹¹ BZA Appeal 19777- Exhibit 2 at page 9 of Appellant’s Appeal.

¹² 11-B DCMR § 323.8.

an above grade AC window unit.”¹³ The air-conditioning units located in the side yard are affixed to the ground and not attached to the Property. Therefore, they do not qualify as a projection subject to 11-B DCMR § 323.1.

Second, the air-conditioning units located at 4400 Albemarle Street, N.W. are not subject to the two-foot projection limitation found at 11-B DCMR § 327, entitled, “General Conditions for Transition Regulations.” Table B § 329.2 “Limitations On Encroachment Into Any Required Buffer Transition Setback,” found within 11-B DCMR § 327, identifies the limitation on specific projecting elements. Specifically, the table shows that if the projecting element is a self-contained air-conditioner, the air-conditioner is limited to two feet.¹⁴ Appellant incorrectly argues that the air-conditioners in the side yard of 4400 Albemarle Street, N.W. violate 11-B DCMR § 327.2. 11-B DCMR § 327 pertains to transition areas such as mixed-used areas and industrial areas, such as a PDR zone. Properties located in in these areas are subject to the regulations assigned to that area in addition to any applicable transition regulations. However, the Property, 4400 Albemarle Street, N.W., is located in an R-1-B zone, which is not in a transition area, and therefore, not subject to transition regulations.

Conclusion

For the foregoing reasons, DCRA respectfully requests that the Board (1) affirm that the Zoning Administrator correctly determined that the air-conditioning units may be installed in the side yard of 4400 Albemarle Street, N.W.; and (2) deny this appeal.

Respectfully submitted,
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¹³ BZA Appeal 19777- Exhibit 2A at Exhibit 1.

¹⁴ 11-B DCMR § 327.2.

Date: 11/6/2018

/s/ Adrienne Lord-Sorensen

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CERTIFICATE OF SERVICE

I certify that on this 6th day of November 2018 a copy of “DCRA’s Pre-Hearing Statement” was served via electronic mail to:

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