

BOARD OF ZONING ADJUSTMENT FOR THE DISTRICT OF COLUMBIA

Pre-Hearing Statement of Stephen Cobb: 1267 Penn St NE, Permit B1804093

Introduction

Permit B1804093 is a permit to redevelop a two-story rowhouse at 1267 Penn St NE, Washington, DC 20002. The Zoning Administrator approved the permit on May 18, 2018. Among other things, the permit allows the developer–owner to add a third-story pop-up, with a roofdeck on top of the third story.

The Appellant takes exception to entire permit because it is issued in the name of a previous owner who gave up her house in 1989 and died in 2008.

The Appellant also takes exception to both the third story and the roofdeck for the following reasons:

1. The third story would improperly remove the existing parapets.
2. The roofdeck would be improper in both existence and design.
3. The third story and roofdeck would be inconsistent with the neighborhood’s character and would detriment the overall environment.

The Appellant respectfully asks that the Board modify the Zoning Administrator’s decision, and strike those parts of the permit allowing construction of the third story and the roofdeck.

Required Statements

1. This is an appeal from the decision by the Zoning Administrator, Matthew Le Grant, to issue Permit B1804093. A copy of the decision is attached as Exhibit 1.
2. The property at issue is at 1267 Penn St NE, Washington, DC 20002 (Lot 4060 0233). It is in Zone District RF.
3. The property’s owner is 1267 Penn St NE LLC. Its address is 8855 Annapolis Road, Suite 205, Lanham, MD 20706-2942. Note, though, that the permit lists Annie C Clayton as the owner (Exhibit 1). Ms. Clayton surrendered her property in 1989 and died in 2008 (Exhibits 2–3). 1267 Penn St NE LLC is the true owner (Exhibit 4).
4. This appeal is timely under 11-Y DCMR § 302.2 because the Appellant had notice of the Zoning Administrator’s decision on May 21, 2018, when he checked the permit’s status online.
5. These are the issues on appeal:
 - a. Whether the third story improperly removes existing parapets. 11-E DCMR § 206.1(a). The Appellant is aggrieved because he would lose his view of the District and much of his home’s natural light, and the third story could infringe on his side of the party wall.
 - b. Whether the roofdeck would be improper in existence. 11-B DCMR § 100.2. The Appellant is aggrieved because he would lose his view of the District and much of his home’s natural light.
 - c. Whether the roofdeck would be improper in design. 11-C DCMR § 1502.1(a)–(c). The Appellant is aggrieved because he would lose his view of the District and much of his home’s natural light.

- d. Whether the third story and roofdeck recognize and reinforce the importance of neighborhood character. 11-E DCMR § 100.3(a). The Appellant is aggrieved because he would be living next to a home that is out of place on the block specifically and in Trinidad generally.
 - e. Whether the third story and roofdeck improve the overall environment. 11-E DCMR § 100.3(a). The Appellant is aggrieved because he would lose his view of the District and much of his home's natural light.
5. At the hearing, the Appellant may offer into evidence statements, information, briefs, reports, plans, photographs, and other exhibits of supporting witnesses.
 6. The Appellant does not yet have a written summary of witnesses who may testify, but he will submit them to the Board when they become available.
 7. The Appellant has attached certain online maps as exhibits. The public may view these documents online by following the URL listed in the exhibit.

The Appellant

The Appellant is Stephen Cobb. He owns and occupies 1269 Penn St NE, which shares a party wall with 1267 Penn St NE. He is thus aggrieved by the Zoning Administrator's issuance of Permit B1804093.

Exceptions to the Issuance of Permit B1804093

Mr. Cobb takes three exceptions to the issuance of Permit B1804093.

1. The Third Story Would Improperly Remove the Existing Parapets

"A roof top or architectural element original to the building such as cornices, porch roofs, a turret, tower, or dormers, shall not be removed or significantly altered . . ." 11-E DCMR § 206.1(a). Parapets are such an architectural element, even if small (Exhibit 5). 1267 Penn currently has at least two parapets: one on the front and one on the detached side (Exhibit 6). But the proposed redevelopment would remove these parapets to make room for the third story (Exhibits 7–9).

2. The Roofdeck Would Be Improper in Both Existence and Design

Nor can the proposed roofdeck lawfully exist. A roofdeck is a kind of penthouse. *See* 11-B DCMR § 100.2 (defining *penthouse* as a "structure on or above the roof of any part of a building"). And with some irrelevant exceptions, "a penthouse . . . shall not be permitted on the roof of a detached dwelling, semi-detached dwelling, rowhouse or flat in any zone." 11-C DCMR § 1500.4; *see also* 11-E DCMR § 202.1 (stating that penthouses in RF-zoned properties are subject to Subtitle C, Chapter 15). And even if the roofdeck were allowed, its design is nonconforming in two ways.

First, the roofdeck would take up too much roof area. "Penthouses shall not exceed one-third (1/3) of the total roof area upon which the penthouse sits in the following areas: Zones or portions of zones where there is a limitation on the number of stories of three (3) or less." 11-C DCMR § 1503.2(a). 1267 Penn is zoned RF-1 (Exhibit 10). RF-1 properties are limited to three stories. 11-E DCMR § 303.1. And the roofdeck would cover the entire roof (Exhibit 11). The roofdeck would thus take up 2/3 too much of the total roof area.

Second, the roofdeck would lack the required setbacks. A roofdeck must have front, rear, and side setbacks equal to its height from the front, rear, and side walls on which it is located. 11-C DCMR § 1502.1(a)–(c). The roofdeck here would have a height of 1’9”, or 5’5” with the parapets. Yet it has no setbacks (Exhibits 7–9). The roofdeck would thus violate zoning law in both its existence and design.

3. The Third Story and Roofdeck Would Detriment the Neighborhood’s Character and the Overall Environment

1267 Penn is zoned RF-1 and is in the Trinidad neighborhood (Exhibit 10). Among other things, RF zoning is meant to “recognize and reinforce the importance of neighborhood character” and make “improvements to the overall environment.” 11-E DCMR § 100.3(a). Yet the roofdeck would go against Trinidad’s character in two ways: by blocking some residents’ views of Downtown DC, and by being inconsistent with the whole neighborhood’s character. And in doing so, it would detriment the overall environment.

First, the specific. 1267 Penn and the surrounding homes—including Mr. Cobb’s—sit on a hill (Exhibit 12). This hill provides neighbors with unique, panoramic, city-wide views of the District. Yet the third story pop-up and roofdeck would deprive these residents of their views, most dramatically by blocking their views into Downtown DC (Exhibit 13). Various District laws acknowledge the importance of such views. *See, e.g.*, 11-X DCMR § 604(c)(3) (noting that development in historic districts should “respect and protect the key landscape vistas and axial views of landmarks and important places”). The third story and roofdeck at 1267 Penn would put an end to one of most distinctive geographical benefits of being a Trinidad resident.

In terms of environment, not only would the third story and roofdeck not improve the overall environment—it would detract from it. Nearby residents would lose not only their views, but also the corresponding natural light. The third story and roofdeck would thus violate two principles of RF zoning.

Neighborhood-wide, Trinidad boasts a unique neighborhood unity, which would be drastically disrupted by the addition of a third floor and a roofdeck at 1267 Penn.

Trinidad residents have expressed these concerns before. In opposing an application that was withdrawn because of neighborhood resistance, the community said it best:

Consistent with the purpose of the RF-1 zoning designation, Trinidad has been uniquely preserved within the District as a tightknit community of predominantly single family homes. Even with the vast development throughout the District, Trinidad has remained a diverse and close community of families and older residents, some of whom have joined the community recently and others who have been here for generations. . . . We all work hard to preserve that sense of community. The homes are old and lovely, with 100-year old exteriors and detailed parapets of only a few varieties. While many homes have modern, renovated interiors, apart from the 2 condominiums that have been erected in the past couple of years, every home has preserved the distinctive, historical facades of the homes on our street.

(Exhibit 14 at 1–2, Letter in Opposition from Neighbors (Sept. 11, 2016), BZA Case 19326, Ex. 41) (citation omitted).

Such concerns are not isolated incidents. In a different Board case, ANC 5D Commissioner Keisha Shropshire marshalled community input to express concern with a redevelopment that was “inconsistent with the row house character, streetscape, and landscape structure of current single family dwellings” on the street. (Exhibit 15 at 2, Written Testimony in Opposition from

Keisha Shropshire, ANC 5D (Apr. 19, 2016), BZA Case 19173, Ex. 45). And relevant to Mr. Cobb, the community voiced concern with casting “shade/shadow on neighboring residents” and with the “Adverse impact of shadows on light, air, and privacy for the adjacent neighbors/homes” (Exhibit 15 at 4). Overall, the Trinidad community expressed a sentiment that Mr. Cobb shares toward the rundown 1267 Penn property: “The community is excited about the opportunity to have something constructive done with this long-standing vacant property. However, the community residents desire to have a project that maintains the general character of the block and poses the least amount of stress and changes to disrupt the abutting and adjacent residents’ quality of life” (Exhibit 15 at 10). These concerns ultimately led ANC 5D to oppose the project. (Exhibit 16, ANC 5D Report (Mar. 9, 2016), BZA Case 19173, Ex. 34).

ANC 5D continues to oppose similar projects, citing inconsistency with neighborhood character (Exhibit 17, ANC 5D Report (Jan. 16, 2018), BZA Case 19657, Ex. 48).

These concerns echo loudly here. While the redevelopment of 1267 Penn would provide some benefits to the neighborhood—revival of a blighted property, restoration of the façade, and more—it would also impose new problems. The third story and roofdeck would deprive nearby residents of some of the best views and best natural light in the District. The third story and roofdeck are literally and figuratively out of line with the adjacent homes. What’s more, the property’s south face (including the third story) would be all siding, far outside the character of the 100-year old exteriors and detailed parapets that help define Trinidad (Exhibit 14). Just as similar projects have failed time after time, so should this one, too.

Conclusion

Mr. Cobb believes that 1267 Penn should be redeveloped. The property has long been vacant, and it shows. It might not even be habitable. Mr. Cobb feels that it would be in the interest of future occupants and the community to have the property turned into something that a future Trinidad neighbor could proudly call home.

The proposed redevelopment, however, does not pass muster. The permit is not issued in the owner’s name, creating ambiguity about whether the owner could be held to the permit. And the third story and roofdeck conform to neither zoning law nor neighborhood sentiment. Mr. Cobb therefore requests that the Board modify Permit B1804093 and strike permission to build the third story and roofdeck.