

BOARD OF ZONING ADJUSTMENT FOR THE DISTRICT OF COLUMBIA

Supplement to Pre-Hearing Statement of Stephen Cobb

September 18, 2018

The Appellant, Stephen Cobb, moves as a party under 11-Y DCMR § 302.19 for permission to file this supplemental pre-hearing statement. On September 15, 2018, the Appellant discovered that the developer is not building according to the plans filed with the Zoning Administrator. As a result, the property now violates zoning law in several ways in addition to those listed in the Appellant's original Pre-Hearing Statement (Exhibit 2).

In addition, neighbors Adam and Shelby Telle have filed for intervenor status (Exhibits 22–26). They present arguments related to the side yard. The Appellant raises complementary arguments below related to the rear yard.

This case is an appeal filed by Stephen Cobb, concerning the redevelopment of 1267 Penn St NE by 1267 Penn St NE LLC. The permit at issue here is Permit B1804093.

The Appellant therefore requests that the Board reverse the issuance of Permit B1804093 in full. The reasons for doing so are stated in the original Pre-Hearing Statement, the Telle's Request for Party Status, and below:

1. The Rear Wall, as Built, Would Not Adhere to the Rear-Yard Requirements

1267 Penn St is zoned RF-1 (Exhibit 2J). Properties that are zoned RF-1 require “a minimum rear yard of twenty feet (20 ft.)” 11-E DCMR § 306.1. Since construction began, the rear wall has been built at the basement level. The rear wall, however, is only 17'10” from the rear property line +/- two inches (Exhibits 1–2 to this Statement). The new rear wall would therefore not adhere to the relevant rear-yard requirement.

Nor is the rear wall grandfathered in. To be sure, 1267 Penn St was built in 1927, and extensions may be made into the required rear yard for buildings existing on or before May 12, 1958. 11-E DCMR § 205.3. But that section does not apply here for two reasons. First, the building that existed on or before May 12, 1958, no longer exists: everything except the front façade was demolished during construction. The developers are thus constructing a new building. See 11-B DCMR § 100.1 (defining *building* as a “structure requiring permanent placement on the ground that has one (1) or more floors and a roof supported by columns or walls”).

Second, even if the developers are not constructing new building, they are still adding an extension. When a building's rear wall is grandfather in, “the extension or addition shall be limited to that portion of the rear yard including in the building area on May 12, 1958.” 11-E DCMR § 205.3. Yet the new rear wall extends into the yard beyond the portion of the former rear wall (Exhibit 3 to this Statement). As a result, the rear wall as built does not adhere to 11-E DCMR § 306.1.

2. The Roof Deck Would Present Safety and Privacy Issues

The RF-1 regulations exist in part to “recognize and reinforce . . . improvements to the overall environment.” 11-E DCMR § 100.3(a). As noted in the Appellant’s original Pre-Hearing Statement, the proposed roofdeck is too large and lacks the requisite setbacks. This not only violates zoning law but detracts the overall environment in two ways.

First, there is a safety concern. From the front of the property, the roofdeck’s floor would be 29’8” from the ground. And from the property’s rear, the roofdeck would be roughly 35’8” from the ground (Exhibit 4 to this Statement). The roofdeck parapets, however, would be only 3’6” (Exhibit 4 to this Statement). So the only thing separating someone from falling three or four stories from the roofdeck is a 3’6” barrier. Because the roofdeck would be too large and lack the required setbacks, there is a safety issue.

There is also a privacy issue. The Appellant’s skylight is against the wall shared with 1267 Penn St NE (Exhibit 5 to this Statement). The skylight also opens up into his bathroom, directly over the toilet. Because the roofdeck would be too large and lack the required setbacks, anyone on the roofdeck could peer over the side and see the Appellant in the bathroom. As a result, the roof deck not only violates zoning law as discussed in the original Pre-Hearing Statement, but also presents two practical risks that detract the overall environment.

For these reasons, the Appellant requests that the Board reverse the Zoning Administrator’s issuance of Permit B1804093 in full.