

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

Appeal by Stephen Cobb

BZA Appeal No. 19818

**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 for the following reasons:

Appellant Stephen Cobb alleges that the Zoning Administrator erred in issuing building permit B1804093 (Permit), which permits the Owner of 1267 Penn Street, N.E. (Property) to build a third-story pop-up with a roof deck on the top of the third story. DCRA asserts that the Zoning Administrator reviewed the building permit application and correctly approved the Permit.

FACTUAL AND PROCEDURAL BACKGROUND

On May 18, 2018, 1267 Penn St NE LLC, the Owner of 1267 Penn Street, N.E., obtained building permit B1804093 to change the use from a single-family dwelling to a two family flat with full electrical, mechanical, plumbing, and structural. (Exhibit 1- Building Permit, May 18, 2018.) The permit further permitted underpinning of the existing building foot print, a third floor addition with a rear three story addition and roof decks. (Exhibit 1- Building Permit, May 18, 2018.) The building was to be fully sprinkled. (Exhibit 1- Building Permit, May 18, 2018.)

On May 30, 2018, Appellant, Stephen Cobb, the property owner of 1269 Penn Street, N.E. appealed the issuance of the Permit because Appellant “takes exception to both the third story and the roof deck for the following reasons:

1. The third story would improperly remove the existing parapets.
2. The roof deck would be improper in both existence and design.

3. The third story and roof deck would be inconsistent with the neighborhood’s character and would detriment the overall environment.”¹

ARGUMENT

I. The 2016 Zoning Regulations do not prohibit the removal of the parapet wall.

The Appellant’s claim that the third story would improperly remove the existing parapets is without merit because the zoning regulations do not prohibit the removal of parapet walls. 11-E DCMR § 206.1 states,

“In an RF zone district, the following provisions shall apply:

- (a) A roof top architectural element original to the building such as cornices, porch roofs, a turret, tower, or dormers, shall not be removed or significantly altered, including shifting its location, changing its shape or increasing its height, elevation, or size. For interior lots, not including through lots, the roof top architectural elements shall not include identified roof top architectural elements facing the structure’s rear lot line. For all other lots, the roof top architectural elements shall include identified rooftop architectural elements on all sides of the structure;
- (b) Any addition, including a roof structure or penthouse, shall not block or impede the functioning of a chimney or other external vent compliant with any District of Columbia municipal code on an adjacent property. A chimney or other external vent must be existing and operative at the date of the building permit application for the addition; and
- (c) Any addition, including a roof structure or penthouse, shall not significantly interfere with the operation of an existing solar energy system of at least 2kW on an adjacent property unless agreed to by the owner of the adjacent solar energy system. For the purposes of this paragraph, the following quoted phrases shall have the associated meanings:
 - (1) “Significantly interfere” shall mean an impact caused solely by the addition that decreases the energy produced by the adjacent solar energy system by more than five percent (5%) on an annual basis, as demonstrated by a comparative solar shading study acceptable to the Zoning Administrator; and
 - (2) “Existing solar energy system” shall mean a solar energy system that is, at the time the application for the building permit for the adjacent addition is officially accepted as complete by the Department of Consumer and

¹ BZA 19818- Exhibit 2.

Regulatory Affairs or an application for zoning relief or approval for the adjacent addition is officially accepted as complete by the Office of Zoning, either:

- (A) Legally permitted, installed, and operating; or
- (B) Authorized by an issued permit; provided that the permitted solar energy system is operative within six (6) months after the issuance of the solar energy system permit not including grid interconnection delays caused solely by a utility company connecting to the solar energy system.”

11-E DCMR § 206.1. The 2016 Zoning Regulations expressly prohibit the removal of an “architectural element original to the building such as cornices, porch roofs, a turret, tower, or dormers.” Appellant argues that parapets “are such an architectural element, even if small.”² However, a “parapet wall” is not included in the enumerated list of features prohibited from removal. Thus, there is no prohibition on the removal of the parapet walls under the 2016 Zoning Regulations. This interpretation is further supported by subsequent amendments made by the Zoning Commission. Zoning Commission Order No. 14-11B, which was issued on March 27, 2017 and became effective on April 28, 2017, amended 11-E DCMR § 206.1(a) added additional elements to the enumerated list of protected features. The Zoning Commission did not include parapet walls in the list of enumerated protected features.

Accordingly, Appellant’s argument is not supported by the Zoning Regulations.

II. The Owner’s Proposed Roof Design Does Not Trigger The Penthouse Requirements.

Appellant’s claims that the roof deck is a kind of penthouse and would be improper in both existence and design are without merit. Appellant claims that, as proposed, the roof deck comprises more than 2/3 of the total roof area, which violates 11-C DCMR § 1503.³ Moreover, Appellant claims that the proposed roof deck does not show the setbacks required under 11-C

² BZA 19818- Exhibit 2 at page 2.

³ BZA 19818- Exhibit 2 at page 2.

DCMR § 1502.1(a)-(c).⁴ Appellant’s assertions do not apply to the instant case because the roof deck is simply the “roof” of 1267 Penn Street, N.E., not a penthouse, so, the penthouse requirements are not triggered. The height difference between the top of the roof deck and the top of the third floor ceiling is approximately 3 feet and 1 inch. (Exhibit 2- Architectural Plan A0301 and Exhibit 3- Architect’s Detail Specification of Architectural Plan⁵ A0301.) This approximate three foot area consists of insulation, the roofing membrane, P.T. 2x sleepers followed by 2 x 6 Versadeck. It appears that this 3 foot area, between the “3rd floor ceiling” and “top of the roof deck,” also serves to change the roof from sloped to flat. Based on the proposed materials, the Owner is laying insulation across the entire roof followed by a flooring veneer. (Exhibit 4- Architectural Plan A0502.) All of Appellant’s arguments are based on his incorrect characterization of the third story as a kind of penthouse. Since the roof deck is merely the roof the proposed roof design does not trigger the roof area or setback requirements for a penthouse.

III. The Proposed Third Story and Roof deck Comply With The Zoning Regulations.

Appellant claims that the proposed third story and roof deck at 1267 Penn Street, N.E. are detrimental to the neighborhood’s character and the overall environment.⁶ In support of his position, Appellant asserts that the third story and roof deck would result in neighbors losing their views into Downtown DC and natural light.

The property 1267 Penn Street, N.E. is located in a RF-1 zone. Pursuant to 11-E DCMR § 303.1, the “maximum permitted height of buildings or structures and any additions thereto not including the penthouse, in an RF-1 zone shall not exceed thirty-five feet (35 ft.) and three (3) stories.” The proposed height of 1267 Penn Street, N.E. from grade to the top of the parapet wall

⁴ BZA 19818- Exhibit 2 at pages 2-3.

⁵ The Detail Specification of Architectural Plan was provided by the Owner’s architect and was not part of the original plans approved and stamped by DCRA.

⁶ BZA 19818- Exhibit 2 at pages 3-4.

is 35 feet and 1 inch. However, when measuring the height of a building, the parapet wall is excluded. (11-B DCMR § 308.3) The height of 1267 Penn Street, N.E., excluding the parapet wall,⁷ is 31 feet and 7 inches. (Exhibit 5- Architectural Plan A0202.) This approved height is allowed as a matter of right.

Lastly, the Property consists of the maximum three stories permitted in this zone because the lowest level of the Property is a cellar, and a “story,” as defined by the zoning regulations, does not include cellars. A cellar is “that portion of a story, the ceiling of which is less than four feet (4 ft.) above the adjacent finished grade.”⁸ Since the vertical height is less than six feet, the lowest level is deemed a cellar. (Exhibit 2- Architectural Plan A0301.)

Moreover, under the Zoning Regulations, a “story” does not include cellars. 11-B DCMR § 100 states, in part:

Story: The space between the surface of two (2) successive floors in a building or between the top floor and the ceiling or underside of the roof framing. The number of stories shall be counted at the point from which the height of the building is measured.

For the purpose of determining the maximum number of permitted stories, the term "story" shall not include cellars or penthouses.

(emphasis added.) Thus, while Appellant may take issue with the third story — his arguments related to the view and character are irrelevant to the question of whether the Zoning Administrator correctly approved the permit — the third story was correctly permitted. Based on the aforementioned reasons, the proposed height of the building and the number of stories at 1267 Penn Street, N.E. comply with the Zoning Regulations. Therefore, this appeal should be denied.

⁷ 11-B DCMR § 308.3- The height of a building with a flat roof shall be measured from the BHMP to the highest point of the roof excluding parapets and balustrades not exceeding four feet (4 ft.) in height. (2016 Zoning Regulations)

⁸ 11-B DCMR § 100.

CONCLUSION

For the foregoing reasons, DCRA respectfully requests that the Board (1) affirm that the Zoning Administrator correctly approved the Permit; and (2) deny this appeal.

Respectfully submitted,
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Date: 9/19/2018

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CERTIFICATE OF SERVICE

I certify that on this 19th day of September 2018 a copy of “DCRA’s Pre-Hearing Statement” was served via electronic mail to:

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