BOARD OF ZONING ADJUSTMENT FOR THE DISTRICT OF COLUMBIA

Case No. 19818

Appellant's Reply to Property Owner's Response

The Appellant, Stephen Cobb, files this reply to the Property Owner's Response to Appellant's and Intervenors' Submissions (Exhibit 52).

1. The Third Story Would Improperly Remove the Existing Parapets

The Property Owner contends that roof top architectural elements are limited to those elements expressly listed in 11-E DCMR § 206.1(a). As with DCRA's argument, this reasoning ignores the use of *such as* in § E-206.1(a). The Appellant reiterates the arguments made in his reply to DCRA's response (Exhibit 34A at 1).

A. Section E-206.1(a)'s List of Roof Top Architectural Elements Is Illustrative, Not Exhaustive

The Property Owner states that the Appellant has provided no support for his argument. On the contrary, the Appellant's argument is rooted in the common usage of *such as* and background interpretive principles enshrined in the Zoning Regulations. The phrase *such as* is commonly used to list examples of items that are part of a class, not every item that is part of a class. And as the District of Columbia Court of Appeals has noted, "[I]t is axiomatic that the words of the [regulation] . . . be construed according to their ordinary sense and with the meaning commonly attributed to them." *In re D.F.*, 70 A.3d 240, 243 (D.C. 2013) (alterations in original) (quoting *Peoples Drug Stores, Inc. v. Dist. of Columbia*, 470 A.2d 751, 753 (D.C. 1983) (en banc)) (internal quotation marks omitted). The common meaning of *such as* is illustrative, not exhaustive.

As for background interpretive principles, the Property Owner "fails to see the logic in that argument, as there is no connection between the architectural classification of a parapet and the undue concentration, or distribution, of population" (Exhibit 52 at 1 n.1). If parapets are roof top architectural elements, then they may be removed only with a special exception. 11-E DCMR § 206.2. This creates a hurdle for those seeking to add a roof top structure, including a third story to convert a single-family home into a two-family flat. Under fundamental economic principles, this means that fewer people will obtain permission to build a third story, resulting in fewer conversions from single-family homes to two-family flats. As a result, there will be fewer two-family flats. Hence there will be a lower chance of "undue concentration of population and overcrowding of land" and a higher chance favorable population distribution. 11-A DCMR § 101.1(b)–(c).

This interpretation of § E-206.1 also finds support in other zoning provisions. 11-H DCMR § 1101.4(c) states in part, "In the NC-3 zone, no dwelling or rooming unit in existence as of October 1, 1987, shall be converted to any nonresidential use or to a transient use such as hotel or inn . . . ." Under DCRA's and the Property Owner's reading of this provision, the only transient uses are hotel or inn. But this is not so: 11-U DCMR § 301.1(h)(4) lists "hotel, motel, inn, hostel,

bed and breakfast, private club, tourist home, guest house, or other transient accommodation." Thus, under DCRA's and the Property Owner's reading of *such as*, there would be an inconsistency between the meaning of *transient use* under § H-1101.4(c) and § 301.1(h)(4). Regulations, however, must "be interpreted as a harmonious whole." *Dist. of Columbia Office of Tax & Revenue v. BAE Sys. Enter. Sys., Inc.*, 56 A.3d 477, 483 (D.C. 2012). The only way to harmonize § H-1101.4(c) and § 301.1(h)(4) is to read *such as* as illustrative, not exhaustive. Thus, "hotel or inn" in § H-1101.4(c) are only two examples of transient uses. It follows that § E-206.1(a) lists examples of roof top architectural elements, not the only items that count as such elements.

B. Parapets Are Roof Top Architectural Elements Under § E-206.1(a)

A parapet is a roof top architectural element under § E-206.1(a). Some elements listed in § E-206.1(a) necessarily must be on roofs, such as porch roofs and dormers. But other elements—such as cornices—cans simply be attached to a wall (Exhibit 1 to this Reply). It is therefore not necessary that roof top architectural elements be part of the roof.

Instead, roof top architectural elements are elements that in some way complement the roof. Porch roofs cover the porch. Dormers provide light to upper-floor rooms that are covered by the roof. Turrets, towers, and cornices provide design accents to the roof line. And parapets provide an accent to the roof line, protect roof top gardens and solar panels, prevent water damage to building exteriors, and ensure that people will not fall off the roof (Exhibit 2 to this Reply). They may also be integrated with the roof itself (*Id.*). Functionally, then, parapets fit comfortably with the roof top architectural elements listed in § E-206.1(a).

Many District laws and regulations likewise recognize the interrelationship between roofs and parapets. *See, e.g.* D.C. CODE § 6-601.07 (including parapet walls in building height); *id.* § 6-601.05(c) (same); 11-B DCMR § 307 (same); *id.* § 308.3 (same); *id.* § C-1500.2 (noting that "a penthouse that is less than four feet (4 ft.) in height above a roof or parapet wall shall not be subject to the requirements of this section").

Finally, other District regulations expressly link cornices and parapets. *See, e.g.*, 10-C DCMR § 2513.13 ("A historic sign that is integral to the design of historic property, such as a sign that is carved or etched into masonry or included as part of the design of a parapet or cornice, shall be retained."). As a matter of function and as reflected in other District laws and regulations, parapets are roof top architectural elements under § E-206.1(a).

2. The Penthouse Would Be Improper in Design

Next, the Property Owner echoes DCRA's arguments concerning the penthouse. At the outset, the Appellant concedes that the penthouse may exist. At issue here is (1) whether the structure is a penthouse; and (2) if so, whether the penthouse violates the setback requirements. The Property Owner's response focuses on the first argument.

The Appellant reiterates the arguments made in his reply to DCRA's response (Exhibit 34A at 1–2). To summarize, a penthouse is a "structure on . . . the roof of any part of the building." 11-B DCMR § 101.2. A structure includes "anything attached to something having a permanent location on the ground." *Id.* When considering whether there is a structure, both the floor-like

material on the roof and the parapet walls above the roof must be considered. Further, the plans submitted in support of the Property Owner's application repeatedly describe the roof structure as a roof deck. The structure at issue here is a penthouse, and it violates the Zoning Regulations' size and setback requirements.

3. Neighborhood Character and Overall Environment

The Property Owner also questions the applicability of neighborhood character and overall environment to this appeal. The Appellant does not intend to raise these issues at the hearing.

4. The Penthouse Would Present Safety and Privacy Issues

Fourth, the Property Owner argues that the penthouse would not present safety or privacy issues because there is no penthouse. These arguments tie into those made in Section 2 above, and so are considered there.

5. Changes to the Bump-out Structure Represent an Addition to the Nonconforming Structure

The Property Owner next argues that the property would not result in a bump-out. The Appellant incorporates his arguments on the issue here, as well as those made by the Intervenors. Further, BZA Order No. 17971 is distinguishable from this case. The only issue there was whether the roof deck constituted an addition. The Appellant did not allege that the roof deck was a penthouse, and the Board did not consider the issue.

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

Sixth, the Property Owner contends that the rear-yard size minimum is satisfied here because it will be set back from the rear property line at the same distance before 1958. This argument is based on the revised plat. The revised plat, however, includes the footprint once occupied by the rear enclosed porch. As the Appellant has previously raised, this structure did not exist in 1958, so its footprint cannot be used to calculate the rear-yard length.

7. The Driveways Will Not Meet the Size or Layout Requirements

The Property owner next argues that the driveways behind the house satisfy the Zoning Regulations. Assuming that the driveways will be built to the 18.5' measurement provided in the revised plat (Exhibit 52A), the Appellant does not intend to raise this issue at the hearing.