

**Response to “DCRA’s Response to Intervenor’s Statement”
Shelby and Adam Telle, Intervenors
BZA Case 19818**

Intervenor’s Responses to DCRA

Response to DCRA’s claim that “the proposed construction does not violate the 5-foot side yard requirement”

DCRA claims that “the Property Owner has the option of providing no side yard or a 5-foot side yard.”¹ When 11-E DCMR § 307.1 is read in conjunction with 11-E DCMR § 307.3, side yard shall be provided on any side of a building that is free-standing. The Property Owner would have the option of providing no side yard if building a traditional row-home, attached on both sides. Here, however, the house will be semi-detached, necessitating side yard, which is defined as five feet under 11-E DCMR § 307.3.

Further, the Property Owner would not be able to build to the side property line while still maintaining the planned setback from the street and rear setback. Building to the side property line would then violate the required lot occupancy, again necessitating a side yard, of which the 11-E DCMR § 307.3 requires 5-feet.

Even non-conforming side-yards require “a minimum of two feet” under 11-E DCMR § 307.4. The Property Owner is building 11 inches from the property line.

Response to DCRA’s Claim that “The Proposed Plans do not violate 11-C DCMR § 201”

DCRA claims that the non-conforming structure at 1267 Penn Street NE has not been expanded because the “footprint, gross floor area, nor mass of the non-conforming structure, encroaching into the side yard, are expanded.”² Mass is a measure of the amount of matter something contains. The prior non-conforming structure sat on wooden stilts, was unenclosed, and could be walked under from front yard to backyard. The proposed construction plans expand the nonconforming structure downward, enclosing space that was previously yard beneath the non-conforming structure. As such, the mass of the non-conforming structure is double the original mass, constituting an enlargement of a non-conforming structure.

¹ BZA Case 19818, “D.C. Department of Consumer and Regulatory Affairs’ Response to Intervenor’s Statement” at page 2.

² BZA Case 19818, “D.C. Department of Consumer and Regulatory Affairs’ Response to Intervenor’s Statement” at page 3.

Response to DCRA's Claim that "The Proposed Plans do not violate 11-C DCMR § 202."

DCRA outlines the standard the Office of the Zoning Administrator has laid out for what constitutes a raze. The Intervenors assert that in applying that standard, it is apparent that the non-conforming structure at 1267 Penn Street NE has been razed. Using DCRA's standard that a raze occurs when less than "40% of the pre-existing wall surface area" remains,³ the non-conforming structure has been razed because 100% of its pre-existing walls have been torn down. As Architectural Plan A0100, Part 2: Existing Site Plan demonstrates, the non-conforming structure off the original home was in-fact a separate structure as demonstrated by the dividing wall between it and the main home. (See Attachment A). As such, the entire non-conforming structure has been razed because every wall has been removed.

The Intervenors take further issue with the claim that the "Office of the Zoning Administrator reviewed the plans and found that the proposed construction: 1) did not change the gross floor area of the Property; 2) did not change the lot occupancy; [and] 3) did not change the height of the non-conforming structure." In fact, every level's gross floor area has increased and the lot occupancy increased as noted in Architectural Plan CS-2. (See Attachment B). The height of the nonconforming structure also increased as demonstrated by Architectural Plans A0201 and A0202. (See Attachment C with the non-conforming structure on the righthand side of the building in the drawings).

11-C DCMR § 201.2 holds that a nonconforming structure existing at the time of the zoning laws "may be continued, operated, occupied, or maintained." In the situation at hand, however, the entire nonconforming structure has been destroyed in a raze using the standard adopted by the Zoning Administrator. 11-C DCMR § 203 goes to lengths discussing when a nonconforming structure may or may not be rebuilt when destroyed by fire, collapse, explosion, or act of God. Rebuilding is not guaranteed for these actions. Purposeful destruction of a non-conforming structure should be read as being excluded from being rebuilt in ways that would violate existing zoning laws.

Conclusion

The Intervenors join the Appellant in requesting that the Board reverse the issuance of Permit B1804093 in full. The Intervenors request that any construction at 1267 Penn Street N.E. fully comply with the requirement for 5-feet of side yard.

³ BZA Case 19818, "D.C. Department of Consumer and Regulatory Affairs' Response to Intervenor's Statement" at page 3.

Certificate of Service

I certify that on December 16, 2018, I served Intervenor's Response to "DCRA's Response to Intervenor's Statement" and related exhibits via electronic mail to:

DCRA
Office of Zoning
441 4th Street N.W., Suite 220-S
Washington, D.C. 20001
Service via: bzsubmissions@dc.gov

Adrienne Lord-Sorensen
D.C. Department of Consumer and Regulatory Affairs
1100 4th Street SW
Washington, DC 20024
Service via: Adrienne.lord-sorensen@dc.gov

1267 Penn Street NE LLC
8855 Annapolis Road
Suite 205
Lanham, MD 20706
Service via: reginaldrileyjr@gmail.com

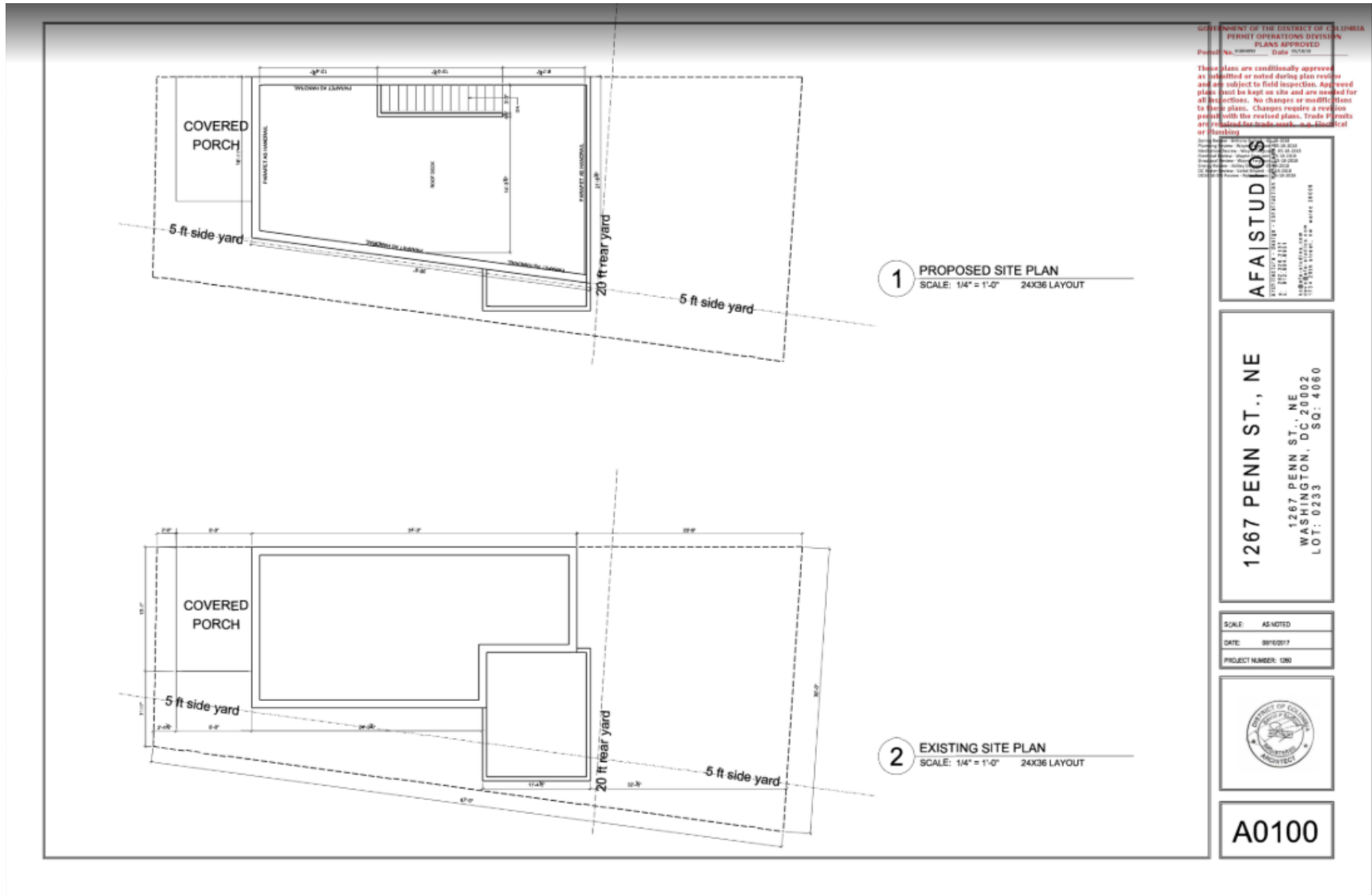
Martin Sullivan
Sullivan & Barros, LP
1155 15th Street, NW, Suite 1003
Service via: msullivan@sullivanbarros.com

Stephen Cobb
1269 Penn Street N.E.
Washington, D.C. 20002
Service via: sacobbva@gmail.com

Clarence Lee
Chairperson
ANC 5D
Service via email: 5D@anc.dc.gov and 5D07@anc.dc.gov

/s/ Shelby Telle
Shelby Telle
Intervenor
BZA Case 19818
(727)656-0401
shelbytelle@gmail.com

Attachment A- Architectural Plan A0100, Part 2: Existing Site Plan



Attachment B- Architectural Plan CS-2 (portions reprinted below):

CLIMATE ZONE	FENESTRATION U-FACTOR	SKYLIGHT U-FACTOR	GLAZED FENESTRATION SHGC	CERILING VALUE	WOOD FRAMED WALL R-VALUE	MASS WALL R-VALUE	FLOOR R-VALUE	BASEMENT FLOOR R-VALUE	SLAB R-VALUE	CRAWL SPACE WALL R-VALUE
1	NB	0.75	0.55	90	13	3.4	11	0	0	0
2	0.01	0.80	0.20	30	13	4.0	11	0	0	0
3	0.35	0.55	0.25	30	20 or 13.0*	R13	15	5.0*	0	5.0*
4 and 4a Marine 4	0.55	0.55	0.40	40	20 or 13.0*	R13	18	10.15	10.2 B	10.15
5 and 5a Marine 5	0.52	0.55	NB	40	20 or 13.0*	R17	20	15.70	10.2 B	15.00
6	0.32	0.55	NB	40	20 or 13.0*	R20	20	15.70	10.4 B	15.10
7 and 8	0.32	0.55	NB	40	20 or 13.0*	R20	20	15.70	10.4 B	15.10

BUILDING DATA	EXISTING	PROPOSED
HEIGHT ABOVE GRADE	21'-7"	34'-0"
HEIGHT BELOW GRADE	2'-0"	2'-0"
CROSS-SECTION FLOOR-CALCULATED FROM EXTERIOR WALLS		
CEILING	85.0 sq. ft.	731.0 sq. ft.
1st FLOOR	40.0 sq. ft.	731.0 sq. ft.
2nd FLOOR	85.0 sq. ft.	85.0 sq. ft.
3rd FLOOR	N/A	95.0 sq. ft.
ROOF DECK	N/A	85.0 sq. ft.
LOT GROUP	0-3	B-2
CONSTRUCTION TYPE	TYPE -VA	TYPE -VA
SPRINKLER SYSTEM	N/A	YES
FIRE ALARM SYSTEM	N/A	YES
FIRE EXTINGUISHERS	YES	YES
SMOKE DETECTION SYSTEM	YES	YES
ADA ACCESSIBILITY	N/A	N/A
FLOOR AREA (TOTAL) (INC. CEILING)	1,721.0 sq. ft.	2,486.0 sq. ft.
NUMBER OF STORES ABOVE GRADE	2	TYPE -VA
RECIPIENT	35	113,000
SOUND TRANSMISSION CLASS	50	50

ZONING DATA	EXISTING	PROPOSED
LOT	4993	4993
ZONE	MS-1	MS-1
VISUAL BALT	1807	2318
LOT AREA	1,813 sq. ft.	1,813 sq. ft.
OFFICE CELLAR FLOOR	1,188 sq. ft.	2,129 sq. ft.
F.A.R.	78	1.30
BUILDING AREA	798 sq. ft.	851 sq. ft.
LOT OCCUPANCY	68.2%	63.3%
NET HEIGHT ABOVE GRADE	24'-2"	24'-2"
BUILDING HEIGHT	27'-7"	34'-0"
NO. OF UNITS	1	2
SIDE YARD SET BACK	5'-0"	5'-0"
REAR YARD SET BACK	17'-0-3/4"	22'-0"

INTERIOR CEILING & WALL FINISH REQUIREMENTS FOR GROUP R-2	ITEM	FINISH CLASS
CORRIDOR	C	C
ROOMS (ENCL. REAR PASSAGE)	C	C
ROOMS (ENCL. REAR PASSAGE)	C	C

DOOR SCHEDULE	TAG	SIZE	DESCRIPTION
(D001)	2'-0" X 6'-0"	FLAT PANEL SOLID CORE MASONRY	
(D002)	2'-0" X 6'-0"	FLAT PANEL SOLID CORE MASONRY	
(D003)	2'-0" X 6'-0"	WEATHERHELD LOW-E U-JE	
(D004)	3'-0" X 6'-0"	FLAT PANEL SOLID CORE MASONRY	
(D005)	2'-0" X 6'-0"	EXTERIOR ENTRY DOOR	
(D006)	2'-0" X 6'-0"	EXTERIOR BENCH RECLAMED	
(D007)	2'-0" X 6'-0"	FLAT PANEL SOLID CORE MASONRY	
(D008)	2'-0" X 6'-0"	FLAT PANEL SOLID CORE MASONRY	
(D009)	2'-0" X 6'-0"	WEATHERHELD LOW-E U-JE	

EXTERIOR DOOR SCHEDULE	TAG	DESCRIPTION
(D005)	WEATHERHELD PREMIUM LINE ENERGY STAR U-FACTOR: .33 STANDARD LOW-E	

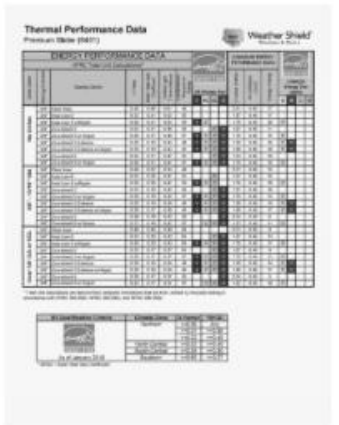
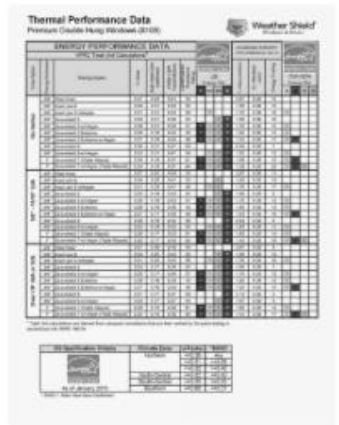


WINDOW SCHEDULE	TAG	ELEVATION	DESCRIPTION
(W001)	Diagram	Diagram	WEATHERHELD PREMIUM LINE ENERGY STAR U-FACTOR: .28 STANDARD LOW-E
(W002)	Diagram	Diagram	WEATHERHELD PREMIUM LINE ENERGY STAR U-FACTOR: .28 STANDARD LOW-E
(W003)	Diagram	Diagram	WEATHERHELD PREMIUM LINE ENERGY STAR U-FACTOR: .28 STANDARD LOW-E
(W004)	Diagram	Diagram	WEATHERHELD PREMIUM LINE ENERGY STAR U-FACTOR: .28 STANDARD LOW-E

COMPONENT	EXISTING	PROPOSED
Roof System	As indicated by details shall be installed in the building structure.	As indicated by details shall be installed in the building structure.
Floors	As indicated by details shall be installed in the building structure.	As indicated by details shall be installed in the building structure.
Exterior Walls	As indicated by details shall be installed in the building structure.	As indicated by details shall be installed in the building structure.
Interior Walls	As indicated by details shall be installed in the building structure.	As indicated by details shall be installed in the building structure.
Windows	As indicated by details shall be installed in the building structure.	As indicated by details shall be installed in the building structure.
Doors	As indicated by details shall be installed in the building structure.	As indicated by details shall be installed in the building structure.
Partitions	As indicated by details shall be installed in the building structure.	As indicated by details shall be installed in the building structure.
Stairways	As indicated by details shall be installed in the building structure.	As indicated by details shall be installed in the building structure.
Elevators	As indicated by details shall be installed in the building structure.	As indicated by details shall be installed in the building structure.

PROJECT IS REQUIRED TO SUBMIT AT FINAL INSPECTION A WIND-BLENDING BLOWER DOME TEST SHOWING A PASSING RATING OF -- 8 CFM PER 100 SQUARE FEET CONDITIONED FLOOR AREA AT A PRESSURE OF 25 PASCAL. A WRITTEN REPORT OF THE RESULTS OF THE TEST SHALL BE SIGNED BY THE PARTY CONDUCTING THE TEST AND PROVIDED TO THE CODE OFFICIAL UPON REQUEST.

PROJECT IS REQUIRED TO SUBMIT AT FINAL INSPECTION A DUCT LEAKAGE TEST SHOWING A PASSING RATING OF -- 8 CFM PER 100 SQUARE FEET CONDITIONED FLOOR AREA AT A PRESSURE OF 25 PASCAL. A WRITTEN REPORT OF THE RESULTS OF THE TEST SHALL BE SIGNED BY THE PARTY CONDUCTING THE TEST AND PROVIDED TO THE CODE OFFICIAL UPON REQUEST.



GOVERNMENT OF THE DISTRICT OF COLUMBIA
PERMIT OPERATIONS DIVISION
PLANS APPROVED
Project No. 202002017 Date 06/24/21


These plans are conditionally approved as submitted or noted during plan review and are subject to field inspection. Any plans must be kept on site and are not to be altered. No changes or modifications to these plans. Changes require a re-submittal with the revised plans. Trade P&E are responsible for any change, including or including.

Date of Issuance: 06/24/21
Drawing No.: 020202017-01
Revision: 01
Title: ARCHITECTURAL PLANS
Project Name: 1267 PENN ST. NE
City: WASHINGTON, DC 20002
Lot: 0233

AFA STUDIOS

1267 PENN ST., NE
WASHINGTON, DC 20002
LOT: 0233

SCALE: AS NOTED
DATE: 06/20/21
PROJECT NUMBER: 190



CS-2

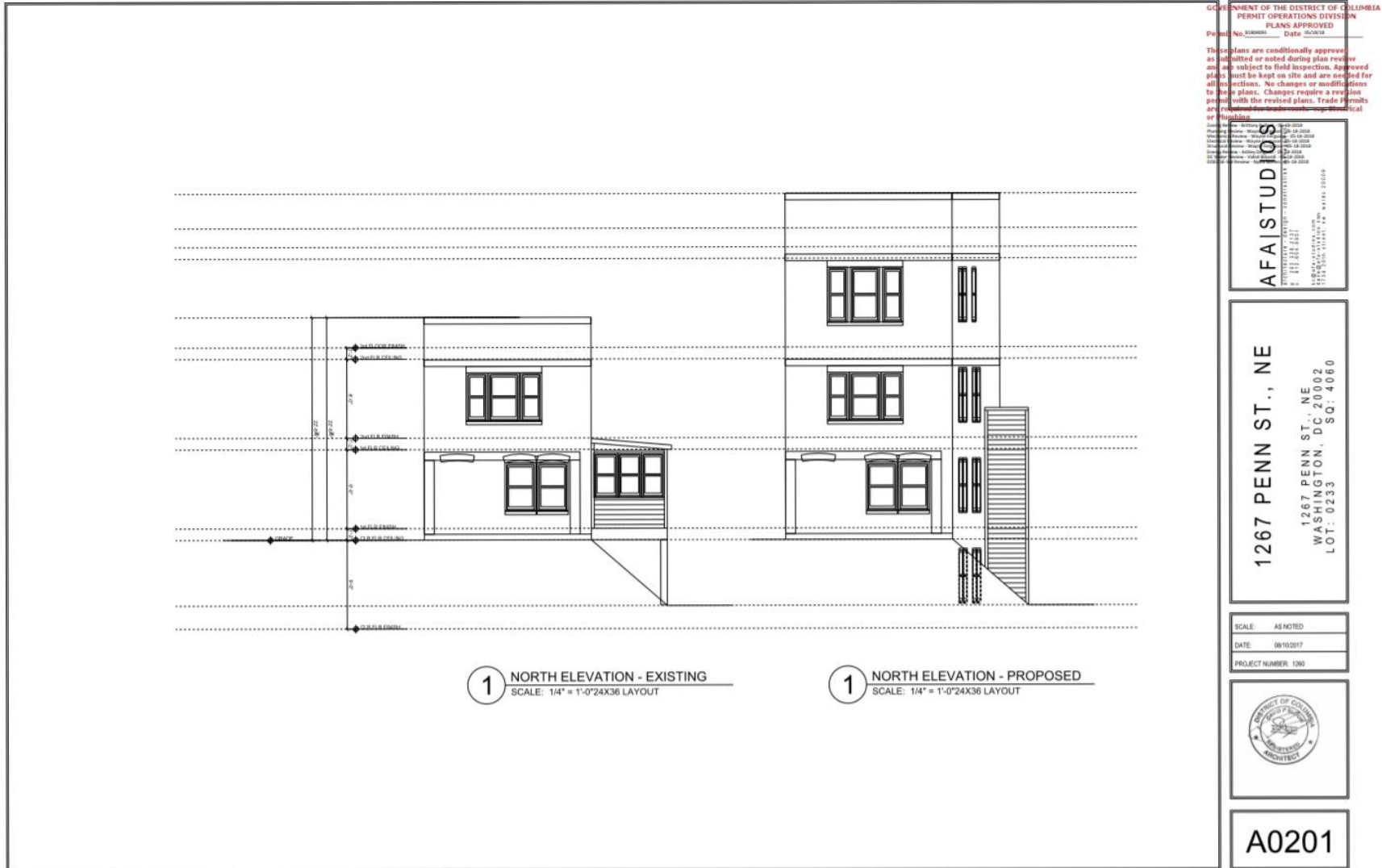
Attachment B Continued-
Architectural Plan CS-2 enlarged for viewing:

BUILDING DATA	EXISTING	PROPOSED
HEIGHT ABOVE GRADE	21'-7"	34'-6"
HEIGHT BELOW GRADE	2'-10"	2'-10"
GROSS SQ. FT. PER FLOOR - CALCULATED FROM EXTERIOR WALLS		
CELLAR	523 sq. ft.	731 sq. ft.
1st FLOOR	675 sq. ft.	731 sq. ft.
2nd FLOOR	523 sq. ft.	689 sq. ft.
3rd FLOOR	N/A	689 sq. ft.
ROOF DECK	N/A	689 sq. ft.
USE GROUP	R-3	R-2
CONSTRUCTION TYPE	TYPE -VA	TYPE -VA
SPRINKLER SYSTEM	NO	YES
FIRE ALARM SYSTEM	NO	YES
FIRE EXTINGUISHERS	YES	YES
SMOKE DETECTION SYSTEM	YES	YES
ADA ACCESSIBILITY	NO	NO
FLOOR AREA (GFA) (INC. CELLAR)	1,721 sq. ft.	2,840 sq. ft.
NUMBER OF STORIES ABOVE GRADE IBC/CHAPTER 5	2	TYPE -VA 3S / 12,000
SOUND TRANSMISSION CLASS	50	50

ZONING DATA	EXISTING	PROPOSED
SQUARE-	4060	4060
LOT-	0023	0233
ZONE-	RF-1	RF-1
YEAR BUILT	1927	2018
LOT AREA	1,613 sq. ft.	1,613 sq. ft.
GFA (NIC. CELLAR FLOOR)	1,198 sq. ft.	2,109 sq. ft.
F.A.R.	.74	1.30
BUILDING AREA	796 sq. ft.	851 sq. ft.
LOT OCCUPANCY	49.3%	53.3%
NO. STORIES ABOVE GRADE	2+C	3 + C
BUILDING HEIGHT	21'-7"	34'-6"
NO. OF UNITS	1	2
SIDE YARD SET BACKS	5'-0"	5'-0"
REAR YARD SET BACK	21'-3 3/4"	20'-3 3/4"

INTERIOR CEILING & WALL FINISH REQUIREMENTS FOR GROUP R-2	
ITEM	FINISH CLASS
EXIT ENCLOSURES/PASSAGE	C
CORRIDORS	C
ROOMS/ENCLOSED SPACES	C

Attachment C- Architectural Plans A0201 and A0202 (Non-conforming structure on the righthand side in the drawings).



Attachment C Continued



These plans are conditionally approved as submitted or noted during plan review and are subject to field inspection. Approved plans must be kept on site and are needed for all inspections. No changes or modifications to these plans. Changes require a revision permit with the revised plans. Trade Permits are required for trade work, e.g. Electrical or Plumbing.