

**Board of Zoning Adjustment  
Appeal 19818  
Closing Statement of Intervenors  
Shelby and Adam Telle**

The Intervenors, Shelby and Adam Telle, thank the Board of Zoning Adjustment (BZA) for the time and consideration that has been given to hearing appeal 19818 regarding construction at 1267 Penn Street N.E. In closing, the Intervenors believe that (1) the issues related to the five-foot side yard requirement can and should be considered by the BZA in this appeal; and (2) that the issuance of building permit B1804093 was in error in part due to violations of the requirement for 5-feet of side yard.

**1- Issues related to the five-foot side yard requirement are within the scope of this BZA appeal.**

- a. The Intervenors have raised the issue of the side yard in every document sent to the BZA and in every appearance before the BZA since September 2018.
  - o When the BZA granted the Telle’s Intervenor Status on Sept. 26, 2018, Chairperson Hill asked “why [the Telles] should be granted intervenor status?” Mr. Telle responded that “there is some question about the five-foot side yard and whether the permit effectively is allowing . . . reconstruction [to] encroach on that five-foot side yard.” (BZA Meeting, Sept. 26, 2018 Hearing Transcript page, 39-40). No concerns or challenges were raised about the Intervenors inclusion of claims related to the side yard.
  - o On November 28, 2018, when the BZA granted the property owner a continuance, there was significant discussion between the Board and the Zoning Administrator about side-yards and the 5-foot requirement. (BZA Meeting, Nov. 28, 2018 Hearing Transcript, page 48-49). Again, no concerns or challenges were raised about the Intervenors inclusion of claims related to the side yard.
  - o Representatives from the Office of the Attorney General were present at both the September and November hearings and had access to the entire record and submissions from the Intervenors. It was only in December, nearly three months after the Intervenors were granted Intervenor status that any mention was made about the Intervenors’ claims set forth in multiple filings and appearances before the BZA.
- b. The scope of the Appellant, Mr. Cobb’s, appeal was for revocation of the entire permit, permit B1804093. Discussions of side-yard affecting this appeal are well

within the scope of Mr. Cobb's appeal and within the authority of the BZA and do not unduly broaden or delay the proceedings.

- c. The property owner has not been negatively impacted in this appeal by the inclusion of the Intervenor's claims about the side yard setback. The property owner poured the foundation and began construction months after BZA case 19818 was filed. The property owner elected to begin construction knowing that BZA case 19818 was pending and would seek to revoke the entire permit.

2- **Building permit B1804093 improperly allows construction to infringe on the side yard.**

- a. Purposely destroyed nonconforming structures may not be rebuilt.

- o 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.
- o Debate over the use of the terms "raze" or "demolished" are irrelevant. Similarly applying the Zoning Administrator's 40% of the wall surface area test is irrelevant. As the architectural renderings for the original home demonstrate, the nonconforming structure was separate from the rest of the house, with dividing walls between it and the main home. As such, 100% of the nonconforming structure's walls have been purposely destroyed.

- b. Existing nonconforming structures may not be enlarged.

- o If the BZA determines that building on the exact footprint of the original home at 1267 Penn Street N.E. is permitted, 11-C DCMR § 201.1, states that non-conforming structures may not be "enlarged upon, expanded, or extended, nor may they be used as a basis for adding other structures or uses prohibited elsewhere in the same zone district." The plans for construction in this situation would expand the original footprint of the non-conforming space, by adding basement space and a terrace. 11-C DCMR § 202.2(b) further states that when an enlargement or addition is made to a structure, the addition or enlargement may "neither increase or extend any existing, nonconforming aspect of the structure." Building further up and down on the same non-conforming footprint is an enlargement in violation of code.

- The Zoning Administrator laid out mass as a measure of whether a nonconforming structure has been expanded. 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.
  - The Zoning Administrator also testified that he considers the impact of nonconforming elements of a structure by considering in part whether the footprint of the building has expanded. The Zoning Administrator testified that his assessment was that the footprint of 1267 Penn Street NE had not changed. At the BZA hearing, however, the Zoning Administrator corrected himself, stating that the structure had in fact increased in lot occupancy. As such, a key consideration made when issuing the original permit was found to be erroneous.
- c. Nonconforming side yards must still be at least two-feet wide.
- Construction at 1267 Penn Street NE is 11 inches from the property line. If the construction is considered to be “a building existing on or before . . . [title 307 of the DC Municipal Regulations],” a non-conforming side-yard must still be 2 feet according to 11-E DCMR § 307.4 which governs side yards in D.C. Zone District RF-1. In the construction on appeal, the overall side yard has been decreased because the entire length of the structure has been popped out and in the key part of the side yard in question, construction is less than two feet from the adjacent property.

### **Conclusion**

As mentioned above, the Intervenors join the Appellant, Stephen Cobb’s, arguments related to permit B1804093 and asks that the BZA revoke the original permit.

The Intervenors are hopeful that all parties can work together following this appeal and look forward to the property owner completing construction, but request that that construction comply with zoning regulations.

## **Certificate of Service**

I certify that on January 23, 2019, I served the Intervenor's "Closing Statement" via electronic mail to:

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