# Appendix of Prior BZA Decisions

Board of Zoning Adjustment
District of Columbia
CASE NO.20452
EXHIBIT NO.33D

## ***BZA Appeal No. 18152 of ANC 1D (2012)***

Case Summary

Appellant appealed a building permit for the renovation and expansion of the Mount Pleasant Library at 3160 16th Street, NW. Appellant alleged errors by the ZA based on loading, parking, court width and improper designation of the rear lot line of the property. The property was an irregularly shaped five-sided lot. The Board granted the appeal as to the rear yard claim. **In reaching this conclusion, the Board confirmed that the Zoning Regulations allow the property owner to select a property's "street frontage" where a lot abuts more than one street and that any prior designation does not bind the property owner so long as the existing building remains conforming. The Board found that, the "Zoning Regulations do not prohibit this result and the flexibility it affords is consistent with the intent of the regulations." Order at 7. The Board also underscored that "deference is due when the ZA selects a reasonable approach." When two methods appear reasonable, "the choice of which is most appropriate is within the Zoning Administrator's discretion." Order at 8.** The Board denied the appeal with respect to its parking and loading claims, noting that the library was a historic resource and, as such, was not required to provide parking or loading since the addition did not meet threshold requirements. Order at 6.

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**
**Board of Zoning Adjustment**

**Appeal No. 18152 of Advisory Neighborhood Commission (ANC) 1D,** pursuant to 11 DCMR §§ 3100 and 3101, from an August 17, 2010 decision of the Department of Consumer and Regulatory Affairs ("DCRA") in the issuance of Building Permit No. B1001861 to allow the renovation and expansion of the existing Mount Pleasant library in the R-5-D District at premises 3160 16th Street, N.W. (Square 2595, Lot 830).

**HEARING DATES:** January 11, 2011, February 1, 2011
**DECISION DATES:** March 1, 2011, April 5, 2011, June 7, 2011, June 21, 2011

## DECISION AND ORDER

This appeal was filed on October 12, 2010, with the Board of Zoning Adjustment (the "Board") by Chris Otten and Gregg Edwards[1]. The appeal challenged DCRA's decision to issue a building permit authorizing the District of Columbia Public Library ("DCPL") to renovate and expand the existing Mount Pleasant Library. The Appellant claims that the permit was unlawful for several reasons, the primary one being that the permit was based upon DCRA's improperly designating the southern lot line as the rear lot line of the property. After dismissing certain portions of the appeal as beyond its jurisdiction, and after allowing the parties an opportunity to be heard, the Board found that that DCRA had erred in its designation of the rear lot line, but had not erred with respect to its determinations regarding parking, loading, and court width. Thus, the Board found that the appeal should be granted in part and denied in part. A full discussion of the facts and law supporting this conclusion follows.

## PRELIMINARY MATTERS

### Notice of Public Hearing

The Office of Zoning scheduled a hearing on January 11, 2011. In accordance with 11 DCMR §§ 3112.13 and 3112.14, the Office of Zoning mailed notice of the hearing to Mr. Otten and Mr. Edwards, to ANC 1C and ANC 1D, to DCPL, and to DCRA.

[1] Although Mr. Otten and Mr. Edwards filed the initial appeal, Advisory Neighborhood Commission ("ANC") 1D substituted itself as the Appellant in this case, and designated Mr. Edwards as its representative. (*See*, Exhibit 26.) Thus, the caption of the appeal was amended to identify ANC 1D as the Appellant, and throughout this Decision and Order, it is understood that the Appellant is ANC 1D.

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Board of Zoning Adjustment
District of Columbia
CASE NO.18152
EXHIBIT NO.9
ZONING COMMISSION
District of Columbia
CASE NO.order-18152
EXHIBIT NO.9

**<u>Parties</u>**

The Appellant in this case is Advisory Neighborhood Commission 1D (the "ANC" or the "Appellant"). ANC Commissioner Greg Edwards spoke for the ANC during the proceedings.

As the owner of the subject property, DCPL is automatically a party under 11 DCMR § 3199.1 and will hereafter be referred to as DCPL or the Library. Jeff Bonvechio, Director of the D.C. Public Libraries Capital Construction Office, was present during the hearing.

DCRA was represented by its Office of the General Counsel.

The Board also granted Intervenor status to Chris Otten based upon his oral motion, and to Evelyn Brewster, the President of the 16th Street Residents' Association (Exhibit 28) and Yasmin Romero-Castillo, President of the Mount Pleasant Street Tenants' Association (Exhibit 27). Both Associations are comprised of tenants who reside at properties in close proximity to the Mount Pleasant Library. The Board consolidated Ms. Brewster and Ms. Romero-Castillo into one party proponent of the appeal.

**<u>Continuances</u>**

As noted, the public hearing was first set for January 11, 2011. However, the Board granted Appellant's continuance request over opposition from DCPL and DCRA, and continued the hearing to February 1, 2011. Appellant requested a second continuance on the February 1 date. However, the Board denied this request, finding a lack of good cause for the continuance.[2]

**<u>Scope of the Hearing</u>**

At the January 11 hearing, the Chair indicated that no testimony would be permitted concerning compliance with the Building Code or the Americans with Disabilities Act because the Zoning Act limits the Board's jurisdiction to actions taken by District officials in carrying out and enforcing the Zoning Regulations. *See, Appeal No. 17329 of Georgetown Residence Alliance,* 53 DCR 5932 (2006). However, the Board later granted Appellant's request to enlarge the appeal to encompass claims relating to court size and loading space requirements. (Exhibit 32.) Thus, on February 1, 2011, the Board heard the merits of the appeal: i.e., whether the Zoning Administrator ("ZA") erred in his determinations regarding parking, loading, court width, and the rear yard designation.

**<u>Closing of the Record</u>**

The Board closed the record at the end of the public hearing except to allow post-hearing

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[2] The continuance request stemmed partly from Appellant's request to conduct discovery. (Exhibit 26.) However, the Board denied both the continuance and discovery requests, since its rules of practice and procedure, as contained in Chapter 31 of 11 DCMR, do not provide for discovery.

memorandums from the parties that were submitted into the record. (Exhibits 42, 43, and 44.)

## FINDINGS OF FACT

The Property

1. The subject property is located at 3160 16th Street, N.W., Square 2595, Lot 830, in the R-5-D Zone.

2. The property is improved by the Mount Pleasant library, a building that was built in 1925 and is listed in the District of Columbia Inventory of Historic Sites. (Exhibit 18.)

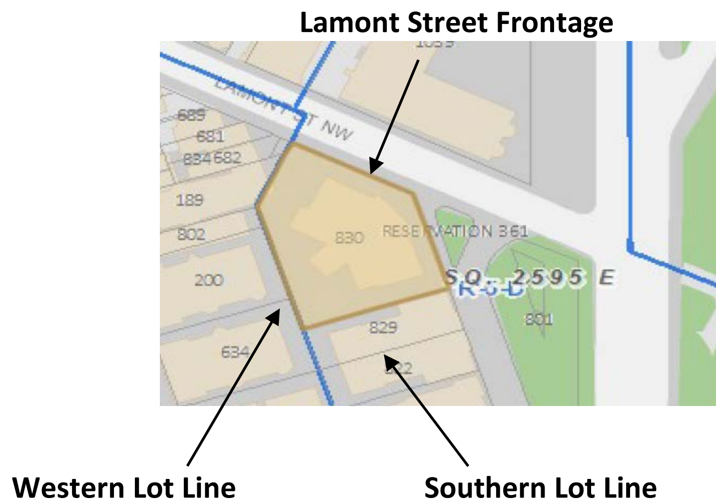
3. The existing library is considered a "historic resource" under the Zoning Regulations. (*See*, 11 DCMR § 2120.)

4. The existing library building has a gross floor area of 18,012 square feet.

5. The property is an irregularly shaped five-sided lot.

6. Three of these sides are relevant to this appeal. These sides will be referred to as the Lamont Street frontage, the southern lot line, and the western lot lone. The following figure identifies each segment.[3]

**Figure 1**




7. The existing library building has frontage on both 16th Street (92.42 feet) and Lamont Street (107.7 feet).

[3] This illustration was taken from the Office of Zoning's electronic zoning map. The lines were added for the sole purpose of relating the text to the illustration. The lines are not intended to identify the actual spatial relationship between the three segments.

8. The Zoning Regulations allow the property owner to select the "street frontage" of a property where a lot abuts more than one street. (*See*, 11 DCMR § 199.1.) Street frontage is "the property line where a lot abuts upon a street." (*Id.)*

9. An irregularly shaped open court extends from the end of the building to the northwest corner of the property. (Exhibit 42.)

The Proposed Project

10. DCPL proposes an interior renovation of the existing building, as well as the construction of an addition.

11. The proposed addition will add 6,973 square feet of gross floor area to the building, thus expanding the gross floor area of the structure to 24,985 square feet, or by about 38%. (Exhibit 18.)

12. The open court at the property, when renovated, will be approximately 25 feet wide. (Transcript, February 1, 2011, p. 216.)

13. The proposed project does not include any parking spaces.

14. The proposed project does not include any loading docks.

15. DCPL chose Lamont Street as the street frontage for the project.

16. The Zoning Regulations define "yard, rear" in part as "the yard between *the rear line of a building* or other structure and *the rear lot line"*. (emphasis added) (11 DCMR 199.1.)

17. A 15-foot rear yard is required in the R-5-D Zone. *See*, 11 DCMR § 404.1.

18. DCPL wished to use the southern lot line as the rear lot line because the distance between that line and the resulting rear building line would satisfy this 15-foot requirement. (*See*, Exhibit 18, Tab C, a survey plat showing the 15-foot setback.)

19. If a line were drawn from the middle of the Lamont Street frontage to the southern lot line, the line would go off on an acute angle of approximate 30 degrees.

20. If a perpendicular line were drawn from the middle of the Lamont Street frontage to the end of the property, the line would intersect the western lot line.

21. There is no setback between the western lot line and the rear building line.

<u>Events leading up to the Issuance of the Permit</u>

22. On March 12, 2009, counsel for the DCPL met with the ZA to seek his confirmation that the southern lot line could be used as the rear lot line.

23. On March 26, 2009, the ZA issued a zoning determination letter to DCPL "confirming [his] conclusions on the rear yard setback" (Exhibit 18, Tab E.)

24. Conclusion number six stated that "the proposed lot line is opposite the Lamont Street frontage."

25. The letter further concluded that a rear yard located between the southern lot line and the rear building line "will ensure that adequate light and air would be provided in" an adjacent apartment house (Conclusion No. 8), and "will result in a larger yard and a greater percentage of unoccupied land area on the lot than any other alternative" (Conclusion No. 9).

<u>The Building Permit</u>

26. A building permit was issued to DCPL on August 13, 2010, authorizing the interior renovation of the existing library, as well as a "9,000 square foot addition" to the existing structure. (Exhibit 18, Tab A.) As noted in Finding of Fact 11, the reference to a 9,000 square foot addition was erroneous, as the addition was actually 6,973 square feet.

<u>The Appeal</u>

27. An appeal was filed on October 12, 2010, challenging DCRA's decision to issue the building permit.

## <u>CONCLUSIONS OF LAW</u>

The Board is authorized by § 8 of the Zoning Act of 1938, D.C. Official Code § 6-641.07(g)(1) (2008 Repl.), to hear and decide appeals where it is alleged that there is error in any decision made by any administrative officer in the administration of the Zoning Regulations. The decision in this case is DCRA's issuance of the building permit. The alleged zoning errors were the ZA's determinations regarding parking requirements, loading requirements, minimum court width requirements, and rear yard setback requirements. Therefore this Order will refer to DCRA as the entity that issued the permit and the ZA as the person who made the interpretations complained of. As will be explained below, the Board concludes that, the ZA did not err with respect to determinations regarding minimum parking, loading, and court width requirements. However the ZA did err regarding his determination that the southern lot line was the rear lot line of the property. In fact, the western lot line was the rear lot line and the

resulting rear yard had less than the 15 feet depth required by § 404.1. Therefore DCRA should not have issued the building permit.[4]

*The Parking Claim*

The Appellant alleges that the ZA erred because he concluded that the addition did not require the provision of any off-street parking.[5] The Appellant is incorrect in this respect.

While it is true that the proposed project includes no parking spaces construction of the addition does not require additional parking. This property is a "historic resource" within the meaning of 11 DCMR § 2120.2 because it "is a building … listed in the District of Columbia Inventory of Historic Sites." As such, under § 2120.3 of the Regulations, no additional parking is required unless the gross floor area of the historic resource is increased by 50% or more. (11 DCMR § 2120.3.) Since the addition only increases the gross floor area by about 38% (Finding of Fact 11), no additional parking is required. As noted in Finding of Fact 26, the building permit's reference to a 9,000 square foot addition was erroneous.

*The Loading Claim*

The Appellant alleges that DCRA also erred because it issued a permit without having received a loading plan from DCPL. Again, Appellant is incorrect. No loading plan was required because no loading requirements existed for this project.

Because this building was constructed prior to May 12, 1958, the loading requirement resulting from any addition is governed by 11 DCMR 2200.6, which in relevant part provides:

> When the intensity of use of a building or structure existing before May 12, 1958 is increased by an addition or additions of … gross floor area, … loading berths, loading platforms, and service/delivery loading spaces *shall be provided for the addition.*

(Emphasis added).

Thus the loading requirements for this building are not based upon its entire gross floor area, but only upon the gross floor area of the addition.

The loading schedule for all uses is appended to § 2201.1. That schedule does not specifically set a loading requirement for a public library use. Therefore, the library use falls into the catch-all category of "Any Other Use in All Districts". There is no loading requirement in the "Any Other Use" category unless the addition has a gross floor area of at least 30,000 square feet or

[4] This error has been cured as a result of the Board's decision in Application No. 18240, which granted the application of DCPL for a variance from the rear yard depth requirement.

[5] The schedule of parking spaces required for public libraries is stated in the table appended to 11 DCMR § 2101.1.

more. As noted, the gross floor area of the addition is 6,973 square feet. (Finding of Fact 11.) Thus, there is no loading requirement for the addition and, it follows, no need to submit a loading plan.

*The Court Width Claim*

The Appellant alleges that the DCRA erred because the permit allowed DCPL to violate the minimum court width requirements. This claim must also be rejected. As explained in the Findings of Fact, the open court at the proposed project will be approximately 25 feet. (Finding of Fact 12.) The Appellant challenged this measurement. However, the Board accepts the ZA's testimony on methodology used to measure the width. The ZA testified exactly how he arrived at the 25-foot measurement. He quoted from the Regulations, stating: "[I]n the case of a non-rectangular court [as this one, the minimum width is] the diameter of the largest circle that may be inscribed in a horizontal plane within the court." (Hearing Transcript, February 1, 2011, p. 214.) Applying this methodology to the court resulted in a width of approximately 25 feet. Since § 406.1 requires a minimum width of only 10 feet, there is no doubt that the court width complies with the Zoning Regulations. (11 DCMR § 406.1.)[6]

*Rear Lot Line Designation*

The Board concludes that the ZA erred by designating the southern lot line as the rear lot line and finds that the western lot line was the rear lot line.

The Board agrees with the ZA that in order to determine the location of a rear yard it is first necessary to determine the location of the "rear lot line". Once that point is known the depth of the resulting yard can be determined. (*See* 11 DCMR 199.1, defining "Yard, rear, depth of" as "the mean horizontal distance between the rear line of a building and the rear lot line, except as provided elsewhere in this title.") The Board also agrees with the ZA that any prior designation of the front of a building does not bind the property owner as to future additions so long as the existing building will remain conforming. The Zoning Regulations do not prohibit this result and the flexibility it affords is consistent with the intent of the regulations.

In this case, DCPL chose Lamont Street for the building's street frontage. The ZA's letter states that the southern lot line is "opposite" the Lamont Street frontage. This may be true in a general sense, but if a line were drawn from the middle of the Lamont Street frontage to the selected southern lot line, the result is a line that inexplicably veers off at an acute angle. The Zoning Regulations contemplate that any line should be drawn perpendicularly from its starting point. If such a perpendicular line is drawn from the Lamont Street frontage, the line intersects the western lot line. The Board therefore concludes that a rear lot line must be directly opposite the chosen street frontage. This means that even when a lot has more than four sides there can be only one possible location for a rear lot line. In this case, that location is the western lot line.

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[6] Again, the library falls into the catch-all category of "all other structures" – "3 inches per foot of height of court, but not less than 10 ft." (11 DCMR § 406.1)

DCRA argues that the Board should defer to the ZA's judgment in this case because the Zoning Regulations are silent as to how a rear lot line is identified. Certainly deference is due when the ZA selects a reasonable approach. For example, in the instance where a building was bounded on either side by row dwellings and the finished grade is not apparent, the Board concluded that it was reasonable to calculate the lower level's contribution to gross floor area either by using the "perimeter wall method" or by using the "grade-plane method". See, *Appeal No. 17109 of Kalorama Citizens Ass'n*, *affirmed on relevant ground, reversed on different ground*, *Kalorama Citizens Ass'n v. District of Columbia Bd. of Zoning Adjustment*, 934 A.2d 393, 399 (D.C. 2007). The BZA concluded that since "[b]oth methods appear reasonable … the choice of which is most appropriate is within the Zoning Administrator's discretion." Order at 14.

In this appeal, the ZA selected the southern lot line as the rear lot line because the resulting rear yard would have less adverse impact on the light and air of an adjacent property and would result in the most unoccupied land area. The Board finds this methodology to be unreasonable. First, as noted, the choice of a lot line that was not directly opposite the Lamont Street frontage is inconsistent with the intent of the Zoning Regulations that a line of measurement should be drawn at a 90 degree angle from its starting point. Second, the selection and use of the type of factors relied upon here would involve the ZA in policy making functions that that fall outside his "responsibility for administratively interpreting and enforcing the Zoning Regulations." *See* Reorg. Order No. 55, Pt. III F, D.C. Code § 185 (1973); *see, e.g. Tenley and Cleveland Park Emergency Committee v. District of Columbia Bd. of Zoning Adjustment,* 550 A.2d 331, 341 n22 (D.C. 1988), *cert. denied,* 489 U.S. 1082 (1989) (Zoning Administrator has "no power to implement the Comprehensive Plan"). Since the method used by the ZA for identifying that rear lot line for the subject property was not reasonable, no deference was due him.

The Board therefore concludes that the western lot line, and not the southern lot line, is the rear lot line for the purposes of determining the location of the rear yard of the subject property. The distance between the western lot line and the rear building line is less than the 15 feet required by § 404.1. Therefore, DCRA erred in issuing the building permit and the Board sustains this portion of the appeal.[7]

## CONCLUSION

For reasons discussed above, it is hereby **ORDERED** that the appeal is **GRANTED** with respect to the rear yard claim and **DENIED** with respect to parking, loading, and court width claims.

[7] An order granting the DCPL a variance from the rear yard depth is published in this same edition of the *D.C. Register.*

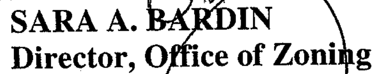
**Vote taken on June 21, 2011.**

**VOTE: 5-0-0** (Meredith H. Moldenhauer, Nicole C. Sorg, Lloyd J. Jordan, Jeffrey L. Hinkle, and Michael G. Turnbull voting to **Deny** the appeal with respect to the parking, loading, and court width claims)

**VOTE: 3-2-0** (Michael G. Turnbull, Lloyd J. Jordan, and Jeffrey L. Hinkle, voting to **Grant** the appeal with respect to the rear yard claim; Meredith H. Moldenhauer and Nicole C. Sorg being opposed)

**BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT**
A majority of the Board members approved the issuance of this order.

**ATTESTED BY:** ______________________



**SARA A. BARDIN**
**Director, Office of Zoning**

**FINAL DATE OF ORDER:** APR 04 2012

PURSUANT TO 11 DCMR § 3125.9, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO § 3125.6.

Yasmin Romero-Castillo
President, The 3145 Mount Pleasant Street
Tenants' Ass'n
3354 Mount Pleasant Street, N.W., # 9
Washington, D.C. 20010

**ATTESTED BY:**

**SARA A. BARDIN**
**Director, Office of Zoning**

***<u>BZA Appeal No. 19080 of Adams Morgan Neighbors for Action (2016)</u>***
***<u>("The Line Hotel Appeal")</u>***

Case Summary

Appellant challenged the building permit issued for the Line Hotel located at 1770 Euclid Street, NW. Among several other claims, Appellants argued that the proposed hotel would not comply with the rear yard requirements, including an argument that the rear yard should be opposite the measuring point for the building. The Board denied the appeal, concluding that the rear yard requirements would be met and that the selection of Columbia Road as the front of the property for rear yard purposes was appropriate and the selection of measuring point on Euclid Street was also appropriate. **The property abuts three streets, Columbia Road, Euclid Street, and Champlain Street NW. While there is only minimal frontage on Columbia Road, the Board deemed the selection not unreasonable because the Zoning Regulations "unambiguously – and without any restriction – allow the Owner to select which street will be used to determine street frontage." Order at 4. The Board agreed with the ZA that the selection of street frontage is *not* tied to (a) the location of the building entrance or the property's address or (b) the measurement of building height. Order at 5 (emphasis added). The Board affirmed the ZA's position that "measuring the building height can occur on another street frontage besides the choice of the frontage for the frontage of the lot." The Board agreed with DCRA that the there is a distinction between determination of "street frontage" and "building frontage;" the former is used to determine the rear lot line designation and the latter is used to measure building height. *Id.***

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**
**Board of Zoning Adjustment**

**Appeal No. 19080 of Adams Morgan Neighbors for Action,** pursuant to 11 DCMR §§ 3100 and 3101, from a June 5, 2015 decision of the Department of Consumer and Regulatory Affairs (DCRA) in the issuance of Building Permit No. B1410380 to allow the construction of a hotel in the RC/C-2-B District at premises 1770 Euclid Street, N.W. (Square 2560, Lots 127, 871, and 875[1])

**HEARING DATE:** October 6, 2015
**DECISION DATE:** October 6, 2015

## DECISION AND ORDER

This appeal was filed on July 9, 2015 with the Board of Zoning Adjustment ("Board") by the Appellant. The appeal challenged DCRA's decision to issue a building permit authorizing the property owner to construct a hotel at the subject property. The Appellant alleged the building permit was issued in error for three reasons: (1) The proposed hotel does not comply with § 774.1 of the Zoning Regulations, which requires a 15-foot rear yard in the C-2-B zone; (2) The Owner failed to obtain a special exception under § 1403.1 of the Zoning Regulations to allow the hotel use, which is otherwise prohibited in the Reed-Cooke (RC) Overlay district; and (3) The Owner does not meet the special exception criterion under § 1403.1(d) to provide a 25-foot buffer between the property and the adjacent residential zone district. After reviewing the record and allowing the parties to be heard, the Board found that DCRA had not erred in issuing the building permit. Thus, the Board denied the appeal. A full discussion of the facts and law supporting this conclusion follows.

## PRELIMINARY MATTERS

### Notice of Public Hearing

The Office of Zoning ("OZ") scheduled a hearing on October 6, 2015. In accordance with 11 DCMR §§ 3112.13 and 3112.14, OZ mailed notice of the hearing to the Appellant, the Advisory Neighborhood Commission ("ANC") 1C (the ANC in which the subject property is located), the property owner, and DCRA. The ANC did not file a report.

[1] The three lots were later consolidated into Lot 139.

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Board of Zoning Adjustment
District of Columbia
CASE NO.19080
EXHIBIT NO.30

**Parties**

The Appellant is Adams Morgan Neighbors for Action ("AMNFA"), an unincorporated non-profit citizens association created for the civic purpose of protecting the personal and property interests of Adams Morgan residents. AMNFA member Cassandra Joseph represented the group during the proceedings.

As the owner of the subject property, the Adams Morgan Hotel Owner, LLC (the Owner), is automatically a party under 11 DCMR § 3199.1 and will hereafter be referred to as the Owner or the Hotel. The Owner was represented by Holland & Knight, Norman M. Glasgow, Esq. during the proceedings.

DCRA was represented by its Office of the General Counsel, Maximilian Tondro, Assistant General Counsel.

## FINDINGS OF FACT

**The Property and Abutting Streets**

1. The subject property is located at 1770 Euclid Street, N.W., in the RC/C-2-B zone district.

2. A rear yard with a minimum depth of 15 feet is required for properties in a C-2-B zone. (11 DCMR § 774.1.)

3. The subject property is a corner lot that abuts three streets: Columbia Road on the northwest, Euclid Street on the north, and Champlain Street on the east. The property also abuts a public alley and a residential lot.

4. Columbia Road is 100 feet wide.

5. Euclid Street is 90 feet wide.

6. Champlain Street is 50 feet wide.

**Zoning Commission Proceedings**

7. The property was the subject of an application before the Zoning Commission for a Planned Unit Development ("PUD") and Zoning Map amendment that rezoned the property from RC/C-2-B and R-5-B to RC/C-2-B, effective March 15, 2013. (Z.C. Order No. 11-17; Z.C. Order No. 11-17 was entered into the record of this appeal as Exhibit No. 15A.)

8. At the time of the PUD application the property was improved with, among other things, an abandoned building that had served as the First Church of Christ, Scientist. The approved PUD was to redevelop the property into a hotel, incorporating the preserved Church building on the site.

9. The PUD Order required the Owner to construct the project consistent with the plans submitted to the Zoning Commission and entered into the record as Exhibit No. 195A. (This exhibit was incorporated by reference into the record of this appeal before the Board in the Owner's Pre-Hearing Statement and DCRA's Pre-Hearing Statement.)

10. The approved plans do not show any rear yard at the property.

11. In a separate proceeding, the Zoning Commission adopted a text amendment to the RC Overlay to allow a hotel use at the property. (Z.C. Order No.12-17, March 15, 2013). Subsection 1401.4 of the RC Overlay was amended to expressly allow a PUD at the property that permitted the integration of the preserved Church building within a hotel use. (60 DCR 3635.)[2]

**Events Leading to the Issuance of the Permit**

12. The Owner filed an application with DCRA for the issuance of a building permit at the property on or about July 30, 2014.

13. The Owner's representative met with the Zoning Administrator ("ZA") on or about May 19, 2015 to discuss the rear yard requirement for the PUD project. The analysis for this project entails a determination of the street frontage at the property, the location of the rear lot line, and the measurement of the rear yard depth.

14. The Zoning Regulations allow the property owner to select the "street frontage" of a property where a lot, such as this one, abuts more than one street. (11 DCMR §199.1.)

15. In a confirming email to the ZA dated May 20, 2015, the Owner wrote that it had selected Columbia Street as the street frontage for the development. (Owner's Pre-Hearing Statement, Ex. 15H.)

16. The email reasons that because the Columbia Road lot line is the front of the property, Champlain Street abuts the rear lot line. (Owner's Pre-Hearing Statement, Ex. 15H.)

17. The email explains further that, pursuant to § 774.11, in the case of a corner lot abutting three or more streets (such as this one), the depth of the rear yard may be measured from the centerline of the street abutting the lot at the rear of the building. Champlain Street is the street that abuts the rear lot line and, because it is 50 feet wide, the rear yard is measured from the centerline of Champlain street; i.e., the rear yard is deemed to be 25 feet wide, which exceeds the 15-foot minimum depth required. (Owner's Pre-Hearing Statement, Ex. 15H).

18. The ZA responded to the Owner's email, stating that he concurred with the Owner's analysis and conclusions. (Owner's Pre-Hearing Statement, Ex. 15H.)

[2] Prior to the amendment, the RC Overlay did not allow any hotel uses. (11 DCMR §1401.1(o).)

**<u>The Building Permit</u>**

19. DCRA issued Building Permit No. B1410380 to the Owner on June 5, 2015.

**<u>The Appeal</u>**

20. On July 9, 2015, the Appellant filed this appeal challenging DCRA's decision to issue the building permit.

## CONCLUSIONS OF LAW

The Board is authorized by § 8 of the Zoning Act of 1938, D.C. Official Code § 6-641.07(g) (1) (2008 Repl.), to hear and decide appeals where it is alleged that there is error in any decision made by any administrative officer in the administration of the Zoning Regulations. The decision in this case is DCRA's issuance of the building permit. The alleged zoning errors were the ZA's determinations regarding rear yard setback requirements and special exception requirements under the RC Overlay, in particular the requirement for a 25-foot buffer. Therefore, this Order will refer to DCRA as the entity that issued the permit and the ZA as the person who made the interpretations complained of. As will be explained below, the Board concludes that the ZA did not err with respect to its determinations regarding the rear yard requirements or the special exception requirements.

**<u>The Property Complies with Rear Yard Setback Requirements</u>**

The subject property is located in the C-2-B zone district. (Finding of Fact 1.) Under §774.1 of the Zoning Regulations, the minimum required rear yard setback is 15 feet. The Board concludes that this requirement has been met, as set forth below in more detail.

*Lot Frontage Selection*

As explained in the Findings of Fact, the Owner selected Columbia Road as the front of the property. (Finding of Fact 14.) The Board agrees that this selection was permissible. Subsection 199.1 states that:

> Where a lot abuts more than one (1) street, the owner shall have the option of selecting which is to be the front for purposes of determining street frontage.

(11 DCMR §199.1.)

The property abuts three streets: Columbia Road, Euclid Street, and Champlain Street. (Finding of Fact 2.) Appellant claims that the selection of Columbia Road was not reasonable because there is minimal frontage on Columbia Road. However, the fact that the Columbia Road frontage is smaller than the Euclid Street frontage or the Champlain Street frontage is of no moment. The Zoning Regulations unambiguously – and without any restriction -- allow the Owner to select which street will be used to determine street frontage.

Appellant argues that the Owner should not be able to select Columbia Road as the front of the property for two additional reasons: (1) Under the approved PUD, Appellant claims it is clear that the main entrance to the proposed hotel building is at Euclid Street, not at Columbia Road; and (2) The Owner previously selected Euclid Street as the front of the building for the purpose of measuring building height, and Appellant claims the Owner should be bound by that selection. (Tr. October 6, 2015[3], p. 99-100 and p.115-117, *See,* also written Testimony of UNITE HERE Local 25, Ex. 22.)

In response to Appellant's arguments, the ZA testified that the Owner's selection of street frontage is not tied to the location of the building entrance or the address of the property. (Tr. p. 111.) Nor, stated the ZA, is the selection of street frontage tied in any way to the measurement of building height; i.e. the ZA testified that "measuring the building height can occur on another street frontage besides the choice of the frontage for the frontage of the lot." (Tr., p. 112.) The Board believes this is a reasonable interpretation. The Board agrees with the position advanced by DCRA's counsel, that there is a distinction built into the Zoning Regulations between the determination of "street frontage" and the "front" of a building. Street frontage is used, among other things, to determine the rear lot line designation; whereas, building frontage is used to measure building height. (Tr., p. 126-127). As such, the fact that Euclid Street is the building front -- used to measure building height – has no bearing on the selection of street frontage.

*Rear Lot Line Designation*

Appellant also disputes the ZA's determination that Champlain Street abuts the property's rear lot line. (Ex. 17.) Appellant claims there is no street at the rear of the property; rather, Appellant claims a residential lot (Lot No. 809) abuts the rear of the property. Appellant explained it is a "common-sense conclusion" that the southern-most lot line be considered the rear lot line of the property. (Tr., p. 98.) However, Appellant's reasoning is incorrect.

The Board has established that the location of a rear yard derives from the location of the rear lot line[4]; the Board has also established a methodology for designating rear lot lines where a lot is oddly shaped or has more than four sides. *Appeal No. 18152 of Advisory Neighborhood Commission 1D* (2012). By this methodology, the rear lot line is determined by drawing a line perpendicular to the chosen street frontage in the middle of the chosen street frontage, in this case, the middle of the Columbia Road street frontage. A line drawn in this manner intersects the eastern property line of the property (not the southern lot line), where it is bounded by Champlain Street.

*Measurement of Rear Yard Depth*

Subsection 774.11 of the Regulations dictates how the rear yard depth is measured in the case of a corner lot, such as the subject property. It provides in pertinent part:

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[3] Hereafter, all references to the transcript of the October 6, 2015 hearing will be designated "Tr.,".
[4] The Zoning Regulations define "yard, rear" in part as "the yard between the rear line of a building or other structure and the rear lot line. (11 DCMR §199.1.)

> In the case of […] a corner lot abutting three (3) or more streets, the depth of the rear yard may be measured from the center line of the street abutting the lot at the rear of the building or other structure.

(11 DCMR §774.11.)

In essence, the development qualifies for § 774.11's option to use half of the street right of way at the rear of the property to comply with rear yard requirements.

As explained above, Champlain Street is the street abutting the rear lot line. It is 50 feet wide. (Finding of Fact 5.) Therefore, the center line of Champlain Street is located 25 feet from the rear lot line and the rear yard is deemed to be 25 feet under § 774.11. Thus, the rear yard requirement (of 15 feet) under § 774.1 is satisfied.

**The Property Complies with the RC Overlay**

Appellant also claims the permit was issued in error because the Owner failed to obtain a special exception to the use provisions of the Overlay under § 1403.1, and because the property violates § 1403.1(d) of the Overlay, which requires a 25-foot buffer from a residence district. Again, the Appellant is incorrect.

The special exception provisions of the Overlay do not apply to this development because the hotel use is a permitted use in the Overlay under §1401.4. It is true that hotel uses are generally prohibited in the Overlay. (11 DCMR §1401.1(o).) However, as outlined in the Findings of Fact, the Overlay provisions were amended in 2013 to include § 1401.4. (Finding of Fact 10.) Section 1401.4 provides in pertinent part:

> Notwithstanding § 1401.1 [list of prohibited uses in the RC Overlay], the Zoning Commission may approve a planned unit development that *permits* a hotel use integrating the First Church Christ Scientist building on a new lot created by combining Lots 872, 875, and 127 of Square 2560… (emphasis supplied)

(11 DCMR § 1401.4.)

The Zoning Commission applied this provision when it approved the PUD application. Thus, the PUD is an approved hotel use in the Overlay and no special exception is required.

Since a special exception under § 1403 is not required, none of criteria for granting the exception, including the buffer described in §1403.1(d) apply to this development.

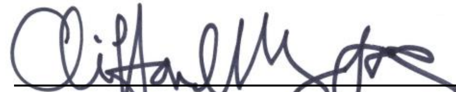
**CONCLUSION**

For reasons discussed above, it is hereby **ORDERED** that the appeal is **DENIED** in its entirety.

Vote taken on October 6, 2015

**VOTE: 3-0-2** (Marcie I. Cohen Frederick L. Hill, and Marnique Y. Heath, voting to Deny the appeal, affirming the Zoning Administrator; Jeffrey L. Hinkle being necessarily absent; and one Board seat vacant.)

**BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT**
A majority of the Board members approved the issuance of this order.

**ATTESTED BY:** 
**SARA A. BARDIN**
**Director, Office of Zoning**

**FINAL DATE OF ORDER:** August 12, 2016

PURSUANT TO 11 DCMR §3125.9, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO §3125.6

***BZA Appeal No. 18888 of Adams Morgan for Reasonable Development (2017)***

Case Summary

Appellant challenged a building permit to construct a mixed-use building at 1700 Columbia Road NW, alleging errors as to roof structure and rear yard requirements. Relevant here, appellant argued that the rear yard requirements were not satisfied because a below-grade garage and the garage ramp were both located in the required area of the yard. **The Board denied the appeal, holding that the garage ramp and below-grade garage did not violate rear yard requirements since they were both below grade and the "definition of a rear yard requires that it be open to the sky 'from the ground up'". The walls surrounding the ramp were less than four feet above grade and were therefore permitted in the area of the required yard. Order at 7.**

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**
**Board of Zoning Adjustment**

**Appeal No. 18888 of Adams Morgan for Reasonable Development**, pursuant to 11 DCMR §§ 3100 and 3101[1], from a decision of the Zoning Administrator, Department of Consumer and Regulatory Affairs, to approve Building Permit No. B1309151 for construction of a mixed-use building at 1700 Columbia Road, N.W. and located in the C-2-B Zone District (Square 2565, Lot 52).

**HEARING DATE:** January 13, 2015
**DECISION DATE:** February 10, 2015

## ORDER GRANTING MOTION TO DISMISS APPEAL

This appeal was submitted to the Board of Zoning Adjustment ("Board" or "BZA") on September 24, 2014, by Christopher Otten on behalf of Adams Morgan for Reasonable Development ("AMFRD" or "Appellant"). The appeal purported to challenge the issuance of Building Permit No. B1309151 ("Building Permit") on July 24, 2014, for construction of a new six-story residential building with ground floor retail and a below-grade garage ("Building") at 1700 Columbia Road, N.W. ("Property"). As noted in the caption above, the Board determined that the appealable decision was the Zoning Administrator's approval of the issuance of that permit. AMFRD initially alleged that the proposed construction violated the rear yard requirements of § 774 of Title 11, D.C. Municipal Regulations ("Zoning Regulations"). AMFRD amended its appeal on December 30, 2014, to allege that the rooftop structures violate §§ 411.3, 411.5, 411.6, 411.7, and 411.8 of the Zoning Regulations.

On December 30, 2014, Ontario Residential LLC ("Ontario", the owner of the property, and therefore an automatic party[2], filed a motion to dismiss the appeal ("Motion") because it was not timely filed and it failed to state a claim for which relief could be granted.

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[1] This and all other references in this Order to provisions contained in Title 11 DCMR, except those references made in the final all-capitalized paragraphs, are to provisions that were in effect on the date this appeal was filed, but which were repealed as of September 6, 2016 and replaced by new text. Also, all zone districts described in this order were renamed as of that date. The repeal and replacement of the 1958 Regulations and the renaming of the zone districts has no effect on the validity of the Board's decision or the validity of this order.

[2] *See* 11 DCMR § 3199, Definition of "Party, subparagraph (a)(3). As such, it was unnecessary for Ontario's motion to also request it to be granted intervenor status.

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Board of Zoning Adjustment
District of Columbia
CASE NO.18888
EXHIBIT NO.33

The Board held a hearing on the timeliness issue and the merits on January 13, 2015, after which the Board closed the record and scheduled its decision for February 10, 2015. At the Board's public meeting on that date it voted 5-0 to grant the portion of the Motion that sought dismissal on timeliness grounds, to deny the portion of the Motion that sought dismissal based upon an assertion that the Appeal, as filed, failed to state a claim upon which relief could be granted and, in the alternative, to sustain the Zoning Administrator's decision. The findings of facts and conclusions of law that support the Board's decision follow.

## PRELIMINARY MATTERS

Notice of Public Hearing

The Office of Zoning scheduled a hearing on January 13, 2015. In accordance with 11 DCMR §§ 3112.13 and 3112.14, the Office of Zoning mailed notice of the hearing to the Appellant, Advisory Neighborhood Commission ("ANC") 1C (the ANC in which the property is located), the property owners, and the Department of Consumer and Regulatory Affairs ("DCRA"). (Exhibits 3-11.)

Parties

The Appellant in this case is Adams Morgan for Reasonable Development, represented by Mr. Otten. DCRA is the Appellee, as the "person" whose administrative decision is the subject of the instant appeal, pursuant to 11 DCMR § 3199.1(a)(2). As noted, Ontario Residential LLC, the owner of the property and developer of the Building, was automatically a party to the proceeding as was the ANC. However, the ANC did not participate in this proceeding.

## FINDINGS OF FACT

The Property and the Project

1. The Property that is the subject of this appeal is located at 1700 Columbia Road, N.W. (Square 2565, Lot 52). (Exhibit 1.)

2. The Property is located in the C-2-B Zone District in the Adams Morgan neighborhood. (Exhibit 14E, Exhibit 16A.)

3. DCRA issued Building Permit No. B1309151 ("Building Permit") on July 24, 2014, for construction of a new six-story residential building with ground floor retail ("the Project") on the Property.

4. The Project will provide a rear yard with a depth of at least 15 feet. (Exhibit 15.)

5. A garage ramp is located at-grade, within the 15-foot setback and leads to the Building's below-grade garage. (Transcript, p. 84; Exhibit 1.)

6. The walls surrounding the garage ramp are less than four feet in height.

7. The Project's generator is not located within the required rear yard.

8. The platform upon which the generator sits is in the required rear yard and is less than four feet in height.

9. There is no louver located in the required rear yard. (Exhibit 14E, Attachment 13.)

10. The rooftop structures are connected with a trellis at a uniform height. (Transcript pp. 69-70 and Exhibit 22, RTE 3.)

11. The mechanical equipment on the roof is less than four feet in height. (*Id.*)

12. The floor area ratio ("FAR") of the rooftop structures is .13 FAR.

<u>Events leading to the filing of this Appeal</u>

13. AMFRD has carefully followed the development of the Project since at least February of 2013 when it requested and received party status in Application No. 18506 in which the BZA granted relief from the parking, loading, and roof structure requirements for the Project. After the Court of Appeals found no basis for the Board to have granted the roof structure relief, Ontario re-designed the roof structure to meet matter of right standards and withdrew its request for roof structure relief. (Exhibit 14E.)

14. After Ontario filed its request for a building permit to construct the project, AMFRD closely monitored the progress of the permit through the DCRA approval process using DCRA's Property Information Verification System ("PIVS"), which provided the real-time approval status of building permit applications.

15. The Zoning Administrator ("ZA") reviewed and approved the Project on July 14, 2014 and simultaneously entered the approval on the PIVS website. (Exhibit 14B.)

16. AMFRD accessed the PIVS after July 14$^{th}$ and as a result became aware of the ZA's approval, as evidenced by its July 24$^{th}$ email to the ZA in which it stated "[w]e have checked the PIVS webpage at the DCRA website for information and we see that Building Permit #B1309151 has not yet been approved, as it is still under review by some DCRA disciplines." (Exhibit 14A.)

17. The Building Permit was issued on July 24, 2014. (Exhibits 2, 14B.)

18. AMFRD filed this appeal on September 24, 2014, more than 60 days after it became aware of the ZA's decision.

## CONCLUSIONS OF LAW

The Board is authorized by § 8 of the Zoning Act of 1938, D.C. Official Code § 6-641.07(g)(2) (2012 Repl.), to hear and decide appeals where it is alleged by the appellant that there is error in any decision made by any administrative officer in the administration of the Zoning Regulations. An appeal must be filed within 60 days after the date the appellant "had notice or knowledge of the decision complained of, or reasonably should have had notice or knowledge of the decision complained of, whichever is earlier." (11 DCMR § 3112.2 (a).) Although this deadline is a "claims processing rule" and therefore not jurisdictional in nature, *see Gatewood v. District of Columbia Water and Sewer Authority*, 82 A.3d 41 (2013) (WASA deadline to file appeal of water bill is non-jurisdictional), the failure to adhere to the rule will result in the dismissal of an appeal unless the 60-day deadline is extended under circumstances stated at 11 DCMR § 3112.2(d).

<u>The Motion to Dismiss</u>

As noted, the Owner filed a motion to dismiss asserting that the appeal did not state a claim upon which relief can be granted and was not timely filed. As to the first ground, the Board's rules do not specify the level of pleading that must be made when an appeal is filed. The Board's rules only require that an "appeal shall be made on the appropriate form provided by the Board" and that all "information required by such form shall be furnished by the appellant at the time of filing the appeal." (11 DCMR § 3112.5.) Since the Appellant clearly met this requirement, its appeal cannot be dismissed for not meeting a non-existent specificity standard.

With respect to the timeliness grounds, 11 DCMR § 3112.2(a) provides that an appeal must be filed within 60 days from the date the person filing the appeal first had notice or knowledge of the decision complained of, or reasonably should have had notice or knowledge, whichever is earlier. The first question therefore is what is the "decision complained of." The Appellant asserts the decision was DCRA's issuance of the building permit. But in the circumstances presented here, the Board concludes that the decision on appeal was the ZA's July 14, 2014 determination that the Project complied with the Zoning Regulations, which he posted on the PIVS webpage that same day.

In *Basken v. District of Columbia Bd. of Zoning Adjustment*, 946 A.2d 356 (D.C. 2008), the Court of Appeals noted its prior precedent recognizing that a building permit or certificate of occupancy were not the only types of decision that started the time for filing an appeal, noting that:

> [T]he zoning statute and regulations do not tie the time for appealing to the BZA to the issuance of a specified type of notice … our case law specifically recognizes that a letter from DCRA or the Zoning Administrator conveying a zoning decision may be an appealable decision, and may start the time for appeal by a person who has notice of the letter.

946 A. 2d at 366.

Thus, in *Basken*, the Court of Appeals held that a DCRA letter stating an intent to issue a certificate of occupancy notwithstanding the illegality of the proposed use was the appealable decision and not the subsequently issued certificate of occupancy. In *Appeal No. 18300 of Lawrence and Kathleen Ausubel,* the Board applied the principle to the building permit stage, holding that a Zoning Administrator email and not the subsequently issued building permit started the time for filing an appeal. And in *Appeal No. 18469 of Susan Lynch*, the Board found that the ZA's approval for zoning compliance as entered in the PIVS website started the time for filing an appeal, and not the subsequently issued permit. The Board reasoned that:

> The word 'approved' next to zoning in PIVS, without any qualifications, whatsoever was unequivocal: the permit had been cleared by zoning for issuance. Thus, any member of the public accessing this information, including the Appellant, knew that the ZA had approved the revised permit applications for zoning purposes. And, like the Appellants in *Basken* and *Ausubel*, Ms. Lynch's knowledge of the approval gave her the first notice of the zoning decision being complained of.

BZA Appeal No. 18469, p.8.

Since there is nothing to distinguish the *Susan Lynch* precedent from the circumstances involved here, the Board holds that the ZA's July 14th determination of zoning compliance was the decision complained of. The next question is whether the Appellate filed this appeal within 60 days after it knew or should have known of that decision.

The ZA posted his July 14th approval on the PIVS webpage that same day. Ten days thereafter, on July 24th, Mr. Otten, on behalf of AMFRD, emailed the ZA and stated "[w]e have checked the PIVS webpage at the DCRA website for information and we see that Building Permit #B1309151 has not yet been approved, as it is still under review by some DCRA disciplines." The Board concludes that this statement, and particularly its allusion to "some DCRA disciplines" is clear evidence that Mr. Otten knew on or before July 24th of the ZA's July 14th decision. Even if the Board uses the latest possible notice date of July 24th, the 60-day period for filing this appeal expired on September 22, 2014. AMFRD filed its appeal on September 24, 2014.

Subsection 3112.2 (d) provides that the Board may extend the 60-day deadline for the filing of an appeal if the appellant demonstrates that:

> (1) There are exceptional circumstances that are outside of the appellant's control and could not have been reasonably anticipated that substantially impaired the appellant's ability to file an appeal to the Board; and
>
> (2) The extension of time will not prejudice the parties to the appeal, as identified in § 3199.1.

AMFRD did not identify any exceptional circumstances that substantially impaired its ability to timely file this appeal. Therefore, the 60-day period for doing so is not tolled, the appeal is untimely, and the motion to dismiss is granted on that ground.

The Merits

As previously discussed, the untimeliness of this appeal did not deprive the Board of subject matter jurisdiction over the case. Therefore, the Board's vote to dismiss the appeal did not eliminate its ability to also decide the merits. Although the Board hopes that its decision to dismiss the appeal will withstand any petition for review that might be filed, deciding the merits now could prevent a later unnecessary remand. The Board's then Chair therefore moved to both dismiss the appeal and, in the alternative, deny the appeal on its merits. As noted, the motion carried.

The appeal initially challenged the issuance of the Building Permit on the basis that the garage ramp and the below-grade garage are located in the required rear yard. AMFRD's appeal states "the Ontario project impedes onto the rear yard requirements as shown on the record, and noted by the Office of Planning, that half of the rear yard is taken up by the ramp structures leading down to the subterranean garage."

AMFRD subsequently supplemented its appeal on December 30, 2014, to argue that the Building Permit was issued in error because the roof structures violate the Zoning Regulations. AMFRD argues that: (1) there is more than one rooftop enclosure and that a trellis is not sufficient to connect the structures to create a single structure; (2) the roof structure is of varying heights; (3) the mechanical equipment is not fully enclosed; (4) the roof structures exceed permitted floor area ratio; and (5) the roof structures assume more than one third of the total roof area.

At the hearing, Ontario raised additional issues with respect to the rear yard. It argued that the platform on which the generator sits, the generator, the louver, and the walls surrounding the garage ramp were improperly located in the rear yard.

The Board finds that these claims are without merit as explained in further detail below.

*1. The Rear Yard Issues*

A. The Garage and its Ramp and Ramp Structures.

The required rear yard of the Project is not occupied by the garage ramp or the below-grade garage it leads to.

Yard is defined in the Zoning Regulations as:

> an exterior space, other than a court, on the same lot with a building or other structure. A yard required by the provisions of this title shall be open to the sky from the ground up, and shall not be occupied by any building or structure, except

> as specifically provided in this title. No building or structure shall occupy in excess of fifty percent (50%) of a yard required by this title. (11 DCMR § 199.1.)

Rear yard is defined as:

> a yard between the rear line of a building or other structure and the rear lot line, except as provided elsewhere in this title. The rear yard shall be for the full width of the lot and shall be unoccupied, except as specifically authorized in this title. (11 DCMR § 199.1.)

The definition of a rear yard requires that it be open to the sky "from the ground up." The garage ramp and the garage do not violate this requirement. There is no dispute that the garage ramp is located at grade and that the garage is located below grade. Neither the ramp nor the garage "occupy" the rear yard as that term is defined in the Zoning Regulations; thus, each may be located along the property line. Further, it cannot be said that both occupy more than 50% of the rear yard since they do not occupy the rear yard at all. The walls that surround the garage ramp are less than four feet above grade, and are therefore permissible with the required rear yard by virtue of 11 DCMR § 2503.2, which states:

> A structure, not including a building no part of which is more than four feet (4 ft.) above the grade at any point, may occupy any yard required under the provisions of this title.

As stated in Finding of Fact No. 9, there is no louver located in the rear yard.

As to the Project's generator and platform, AMFRD alleged that the platform upon which the generator sits is located in the rear yard but that the generator itself is not located in the rear yard. Like the garage ramp walls, the platform is less than four feet above grade and therefore also is permitted pursuant to § 2503.2.

For these reasons the Board concludes that all the rear yard violations asserted by AMFRD are without merit.

*B. The Roof Structures.*

Similarly, AMFRD has proven no violation of the roof structure provisions of § 411.

AMFRD states five violations of the roof structures: (1) there is more than one rooftop enclosure and that a trellis is not sufficient to connect the structures to create a single structure; (2) the roof structure is of varying heights; (3) the mechanical equipment is not fully enclosed; (4) the roof structures exceed permitted floor area ratio; and (5) the roof structures assume more than one third of the total roof area. The Board will discuss each allegation in turn.

AMFRD claims that there is more than one roof structure because a trellis is not sufficient to connect the structures and to create a single structure. AMFRD ignores the clear precedent of this

Board that accepts trellises as proper elements to connect structures. In BZA Application No. 18263-B, the Board agreed with the Zoning Commission that "a trellis may constitute such a connection between separate portions of a structure that creates one building under the Zoning Regulations." BZA Application No. 18263-B of Stephanie and John Lester, p. 11. *See also* BZA Application No. 17331 of JPI Apartment Development LP, where the Board found that "the trellis provides an adequate connection between the existing single-family house and the addition to the rear to constitute one building under the Zoning Regulations." Accordingly, AMFRD's claim that a trellis is not sufficient to connect the roof structures to create single structure is unfounded.

Because AMFRD does not accept that the trellis is a part of the roof structure, it believes the structures are of varying height. Nevertheless, during the hearing for the motion to dismiss, AMFRD conceded that if the trellis was accepted as a part of the roof structure, the structure would be of a uniform height. Since the Board has so decided, AMFRD's claim that the roof structure is of varying heights is without basis.

AMFRD next argues that the mechanical equipment on the roof is not fully enclosed. AMFRD conceded at the hearing and the Board independently concludes that the mechanical equipment was less than four feet in height. Subsection 411.17 provides, "Roof structures less than four feet (4 ft.) in height above a roof or parapet wall shall not be subject to the requirements of this section."

Because the mechanical equipment is less than four feet in height, the structure is not subject to the roof structure restrictions.

AMFRD's fourth alleged violation of the roof structures is that the roof structure exceeds the floor area ratio permitted in § 411.8, which states, "Solely for the uses designated in this section, an increase of allowable floor area ratio of not more than thirty-seven hundredths (0.37) shall be permitted."

DCRA submitted evidence into the record that the rooftop structure consists of .13 FAR, which the Board concludes is correct.

Finally, AMFRD testified that it acknowledged that § 411.8 is inapplicable in this case since the Zoning Regulations do not impose a limitation on the number of stories for the Property; AMFRD abandoned this complaint.

## DECISION

For reasons discussed above, the Board DENIES the Motion to Dismiss to the extent it asserts that the appeal, as filed, stated no basis upon which relief can be granted, finds that the appeal was untimely filed and therefore GRANTS the Motion to Dismiss on that basis, and, in the alternative, sustains the Zoning Administrator's decision to approve the building permit application for zoning compliance and therefore DENIES the appeal.

**VOTE**: **3-0-2** (Lloyd J. Jordan, Marnique Y. Heath, and Anthony J. Hood (by absentee ballot) to DISMISS THE APPEAL as untimely and alternatively, SUSTAIN the decision of the Zoning Administrator; S. Kathryn Allen and Jeffrey L. Hinkle not participating or voting.)

**BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT**
A majority of the Board members approved the issuance of this order.

**ATTESTED BY:** ______________________________

**SARA A. BARDIN**
**Director, Office of Zoning**

**FINAL DATE OF ORDER:** October 18, 2017

PURSUANT TO 11 DCMR SUBTITLE Y § 604.11, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO SUBTITLE Y § 604.7.