DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT
One Judiciary Square
441 4th Street, NW
Washington, DC 20001

Appeal by Advisory Neighborhood Commission 6C BZA Appeal No. 21142

PRE-HEARING STATEMENT OF
THE DISTRICT OF COLUMBIA DEPARTMENT OF BUILDINGS

NOW COMES, District of Columbia Department of Buildings ("DOB") in response to appellant Advisory Neighborhood Commission 6C's ("Appellant's") appeal, and it states as follows:

I. INTRODUCTION

Appellant appeals DOB's issuance of Building Permit No. B2308873 ("Permit") (Ex. A) for the construction and renovation of a residential property at 638 I Street, NE (Square 857, Lot 819) ("Property"). Appellant claims that DOB issued the Permit in error. To the contrary, DOB appropriately approved and issued the Permit in compliance with the applicable zoning regulations. The BZA therefore should deny this appeal.

II. BACKGROUND

The plans submitted with the application for Permit B2308873 identify the existing cornice attached at or near the top of the front exterior wall, along with a planned third story addition. The Permit plans show the intact existing cornice without alteration, change in location, shape, height, elevation, or size. (See Ex. B- Permit Set Building Sections and Elevations A200 and A300). The plans do not include a setback of the third story addition from the front of the second story, nor are they required to.

Joel Kelty emailed DOB on February 4, 2024 – four days after the Permit was issued – challenging DOB's issuance of the Permit because "The approved permit drawings are not consistent with the Zoning Administrator's Interpretation 7 regarding required setbacks from protected architecture rooftop elements." The Zoning Administrator responded on February 7, 2024, confirming DOB's determination and that DOB correctly issued the Permit. (See Ex. C- Email exchange among Joel Kelty, Mark Eckenwiler, and Kathleen Beeton).

III. ARGUMENT

DOB did not err in issuing the Permit. Appellant's April 1, 2024 Statement in Support of Appeal ("Appellant's Statement") states that "…DOB's Permit issuance was erroneous because the permit authorizes construction of an upper-floor addition directly atop an existing cornice—that is, above the cornice in the same plane with no setback." (See Appellant's Statement, ¶8). Appellant's October 30, 2024 Pre-Hearing Statement advances a slightly more detailed, but still unconvincing argument. In sum, Appellant's arguments are based on a position that DOB has never adopted, and has, in fact, expressly rejected.

A. The Permit Plans and Issued Permit Comply With 11-E DCMR §204.1

Appellant's appeal must be denied because the Permit plans comply with the relevant zoning regulation, 11-E DCMR §204.1. It states:

> Except for properties subject to review by the Historic Preservation Review Board or their designee, or the U.S. Commission of Fine Arts, a roof top architectural element original to a principal building such as cornices, porch roofs, a turret, tower, or dormers, shall not be removed or significantly altered, including shifting its location, changing its shape or increasing its height, elevation, or size.

The Permit plans reflect an unaltered cornice. Indeed, construction under the Permit is completed; the Property has been built to the plans and the Permit. (See Ex. D- Picture of completed building at 638 I St NE). The cornice's location as depicted in the plans is not shifted,

its shape is not changed, and its height, elevation, and size are not increased. Therefore, the Permit plans comply with the only regulation cited by Appellant in support of his appeal. "The BZA shall hear and decide zoning appeals where it is alleged by the appellant that there is an error … in the administration or enforcement of the Zoning Regulations." 11-X DCMR § 1100.2. Here, DOB did not err in its application of the only regulation cited by Appellant, 11-E DCMR §204.1.

B. Appellant Misinterprets and Misapplies 11-E DCMR §204.1 and ZA Zoning Interpretation 7.

Appellant erroneously suggests that 11-E DCMR §204.1 provides the definition for the term "cornice", and that the definition of "cornice" is architectural rooftop element[1]. In contrast, 11-E DCMR §204.1 simply includes a cornice as a potential type of rooftop architectural element subject to the requirements of 11-E DCMR §204.1.

In addition, and despite Appellant's claim to the contrary, the Zoning Administrator did not use or rely upon Interpretation 7 for the zoning determination at issue in this appeal: issuance of the Permit. Appellant cannot appeal a zoning interpretation that was not applied to the determination at issue, particularly when an applicable zoning regulation was correctly applied as it was here. Further, DOB has always and consistently taken the position that Interpretation 7 does not apply to cornices. [See Ex. E- An Email from former Zoning Administrator Matt LeGrant that was utilized as an exhibit (Exhibit 48) in BZA Case 20437].

[1] The terms "cornice" and "roof top architectural element" are not defined in the Zoning Regulations. "Words not defined in this section shall have the meanings given in Webster's Unabridged Dictionary." 11-B DCMR §100.1. The relevant Websters Unabridged Dictionary definition of cornice is:

> a: the typically molded and projecting horizontal member that crowns an architectural composition …
>
> b: the top course of the wall when treated as a finish or crowning member

DOB has only applied the "three foot rule" to elements with mass or volume, such as a turret, tower, dormer, or mansard roof. Cornices have little to no mass or substance and are typically a decorative feature at the top of a wall or applied to a facade.

In short, DOB has not historically applied Interpretation 7 to cornices, nor did it err by not applying it to the cornice in this case. Instead, and determinative of Appellant's appeal, DOB correctly applied and enforced the actual applicable regulation at issue, 11-E DCMR §204.1.

C. Appellant's Argument that a Cornice May be Removed is Inapplicable to the Instant Case and, In any Event, Meritless

Appellant claims that "[t]he Administrator's position ignores the clear language of section E-204.1, which expressly lists cornices as protected rooftop architectural elements. Moreover, the effect of the ZA's position is that it allows the total removal of the original cornice. Why? Because the ZA has also emphatically staked out the position that an architectural feature cannot be a 'cornice' if it does not occupy the extreme top position on a façade." Appellant's argument completely ignores the relevant DOB determination applicable to this case.

DOB issued a permit based on plans depicting a cornice undisturbed by the permitted construction, and consistent with 11-E DCMR §204.1 in its entirety. DOB did not allow "the total removal of the original cornice" as Appellant suggests. The intent of the Roof Top or Upper Floor Elements regulation is to encourage the retention of the major defining features of residential buildings that contribute to the architectural character of rowhouse neighborhoods, and to minimize potential conflicts between upper floor additions and solar. A cornice can and would be required to be retained and would continue to contribute to the architectural character even with an addition located on the roof above. The same cannot be said for a turret, tower, dormer, or mansard roof. Without physical separation, the addition would subsume that rooftop architectural element, and the major defining features would be lost.

Lastly, Appellant inappropriately relies on an inapplicable BZA case (BZA Case 19550) for his argument that "DOB and the ZA take the position that an element must be at the top of the façade to qualify as a 'cornice,' and that anything even a few inches lower is not a 'cornice' or any other rooftop element protected by section E-204.1." Appellant's statement suggests a DOB position that does not exist. DOB merely and correctly determined in the BZA 19550 case cited by Appellant that the element at issue was not subject to 11-E DCMR § 204.1 because it was located below the rooftop. Similarly, a turret, dormer, or tower that is not located on a rooftop likely would not be subject to 11-E DCMR § 204.1 or the "three foot rule" because the element would not be a *rooftop* architectural element. There should be no dispute that the cornice at the Property is and remains a cornice, and Appellant's contention otherwise is lacking in any foundation, and in any event, is not an issue on appeal.

Appellant then claims: "The inevitable result of the ZA's position is this: once a property owner constructs an upper-story addition (or even a low parapet wall) with no setback, the original cornice **is no longer a 'cornice' and can be significantly altered or even removed entirely as a matter of right.**" (bold in original). This claim fails for two reasons. First, the cornice still exists in conformance with the plans. Second, if the cornice was removed or modified in contradiction of the approved plans, the property owner would be subject to enforcement by DOB.

Appellant's argument has no merit or application to the issues before the BZA.

IV. CONCLUSION

DOB appropriately issued the Permit in accordance with the applicable regulation, 11-E DCMR § 204.1. Appellant's appeal should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on November 13, 2024 a copy of the foregoing was sent via electronic mail and/or the electronic filing system (IZIS) to:

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