

BZA Application No. 21440

6117 32nd Place, NW



Applicant

Paul & Katherine Rosenbaum

Zoning Attorneys

Sullivan & Barros, LLP

Alexandra Wilson

Martin Sullivan

Project Architect

Board of Zoning Adjustment

District of Columbia

CASE NO. 21440

EXHIBIT NO. 45

BPM Architecture
Shawn Buehler

6117 32nd PI NW



6117 32nd PI NW

Washington, District of Columbia



Google Street View

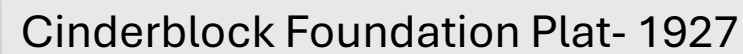
Oct 2018

[See latest date](#)



[2]

4.94



Building Code Definitions

District of Columbia Municipal Regulations

202 GENERAL DEFINITIONS

202.1 Revised definitions. The definitions of the following terms in Section 202 of the *International Building Code* are deleted and new definitions are inserted in their place in Section 202 of the *Building Code*.

ADDITION. An extension or increase in the building area, aggregate floor area, number of stories, or height of a building or structure.

DEMOLITION, PARTIAL. Work of a greater scope than *demolition interior* that includes the removal of structural elements (interior or exterior), exterior walls, roofs, or other exterior elements but is not a *raze*.

RAZE. The complete removal of any existing structure, with or without the removal of party walls and below grade portions of a structure.

Cover Sheet

ROSENBAUM RENOVATION

6117 32nd Pl NW, Washington, D.C. 20015 Project #2401

DC DOB PERMIT# B2504679

PROJECT DESCRIPTION

COMPLETE INTERIOR RENOVATION, ADDITION TO EXISTING SINGLE FAMILY HOME, ALL NEW BUILDING SYSTEMS & FINISHES. OWNER WILL MAINTAIN EXISTING EXTERIOR. (SUBJECT COMPLIANCE WITH ALL REGULATIONS)

SPECIFICATIONS

DIVISION 1 - GENERAL REQUIREMENTS

- 1.1.1 General Conditions: The general conditions of the Agreement Between the Owner and Contractor shall be as set forth in the DC Document A201 (most recent edition).
- 1.1.2 Work Hours: At the time of bid payment by the Owner, the Contractor shall submit a schedule of work hours for the project. The schedule shall be as set forth in the DC Document A201 (most recent edition).
- 1.1.3 Contractor's Liability Insurance: The Contractor shall purchase and maintain liability insurance as set forth in the DC Document A201 (most recent edition).
- 1.1.4 Owner's Liability Insurance: The Owner shall be responsible for purchasing and maintaining the Owner's sole liability insurance.
- 1.1.5 Payment Protection: The Owner shall purchase and maintain payment protection insurance in the amount of the full Contract Sum (or as set forth in the DC Document A201 (most recent edition)). The policy shall be as set forth in the DC Document A201 (most recent edition).
- 1.1.6 Lien Waivers: The Contractor shall submit a lien waiver to the Owner at the time of payment by the Owner. The lien waiver shall be as set forth in the DC Document A201 (most recent edition).
- 1.1.7 Contractor's Liability Insurance: The Contractor shall purchase and maintain liability insurance as set forth in the DC Document A201 (most recent edition).
- 1.1.8 Owner's Liability Insurance: The Owner shall be responsible for purchasing and maintaining the Owner's sole liability insurance.
- 1.1.9 Payment Protection: The Owner shall purchase and maintain payment protection insurance in the amount of the full Contract Sum (or as set forth in the DC Document A201 (most recent edition)). The policy shall be as set forth in the DC Document A201 (most recent edition).
- 1.1.10 Lien Waivers: The Contractor shall submit a lien waiver to the Owner at the time of payment by the Owner. The lien waiver shall be as set forth in the DC Document A201 (most recent edition).

ZONING SITE PLAN

SCALE 1/8" = 1'-0"

NOTE: THIS PLAN IS BASED ON BOUNDARY SURVEY BY SINGER SURVEYING, INC. DATED OCTOBER 2004. SEE ALSO OBSERVATIONS BY SINGER SURVEYING, INC. FOR ANY CHANGES TO THIS PLAN.

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ZONE R-1.5

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GOVERNMENT OF THE DISTRICT OF COLUMBIA
PERMIT OPERATIONS DIVISION

Permit No. B2504679 Date: 07/20/2015

These plans are conditionally approved as submitted or revised 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 Professionals are required for trade work, e.g. Electrical or Plumbing.

BENNETT FRANK MCCARTHY
architects, inc.

1400 Spring Street, Suite 300
Silver Spring, Maryland 209 10-2755
www.bfmcc.com

OWNER: Paul & Kathy Rosenbaum
6117 32nd Pl NW
Washington, D.C. 20015

STRUCTURAL ENGINEER: Robert Wilson, AFAC Registered Engineer
8001 14th St, Suite 200
Silver Spring, MD 20910

MECHANICAL CONSULTANT: Boone Capital, Gas/Mechanical Services
1300 Cleveland Drive
Baltimore, MD 21202

BUILDER: Josephine Homes
DC License #41581600024

DRAWING LIST

Table with 3 columns: REV, SHEET, TITLE. Rows: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100.

DATE: 06/08/2015 ISSUE: PERMIT SET

7/26/2015 10:00 AM HIC 10 COMMENTS

© 2015 Bennett Frank McCarthy Architects, Inc.

CERTIFICATION

DESIGNED BY: J. MCCARTHY
CHECKED BY: J. MCCARTHY
DATE: 06/08/2015

SCALE: 1/8" = 1'-0"

NOTES: 1. SEE ALL NOTES ON SHEET D100.

2. SEE ALL NOTES ON SHEET D100.

3. SEE ALL NOTES ON SHEET D100.

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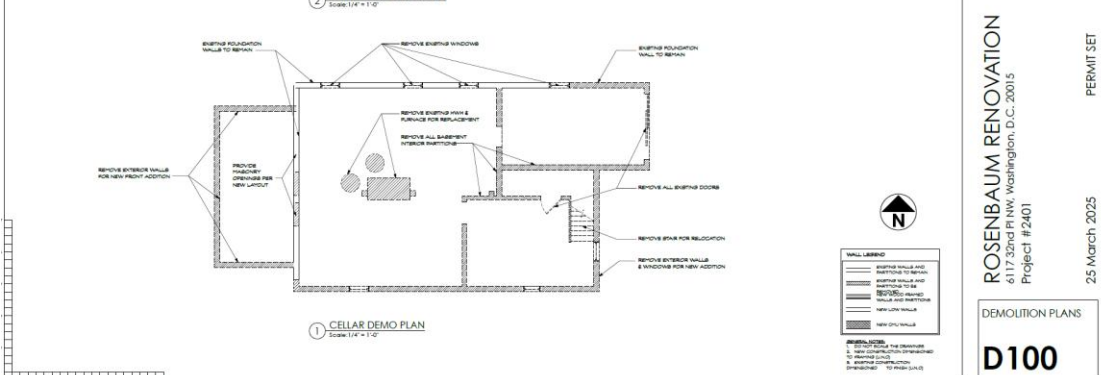
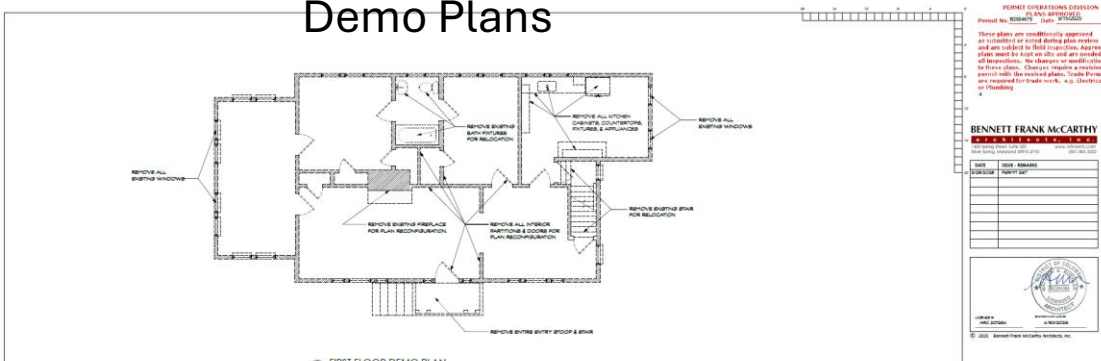
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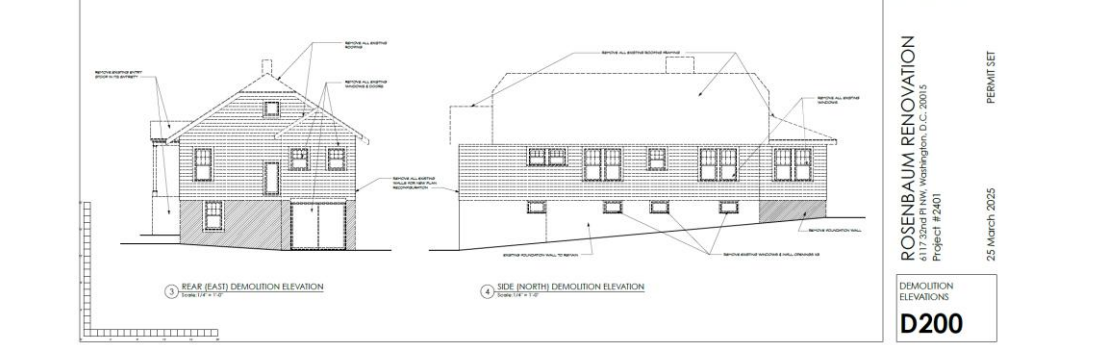
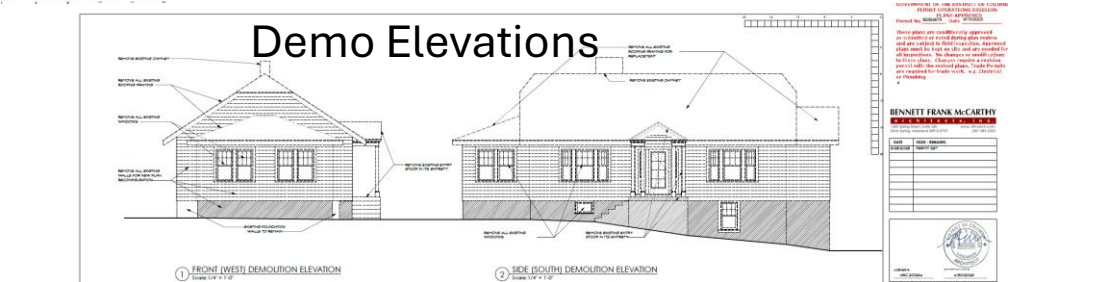
11. SEE ALL NOTES ON SHEET D100.

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Demo Plans

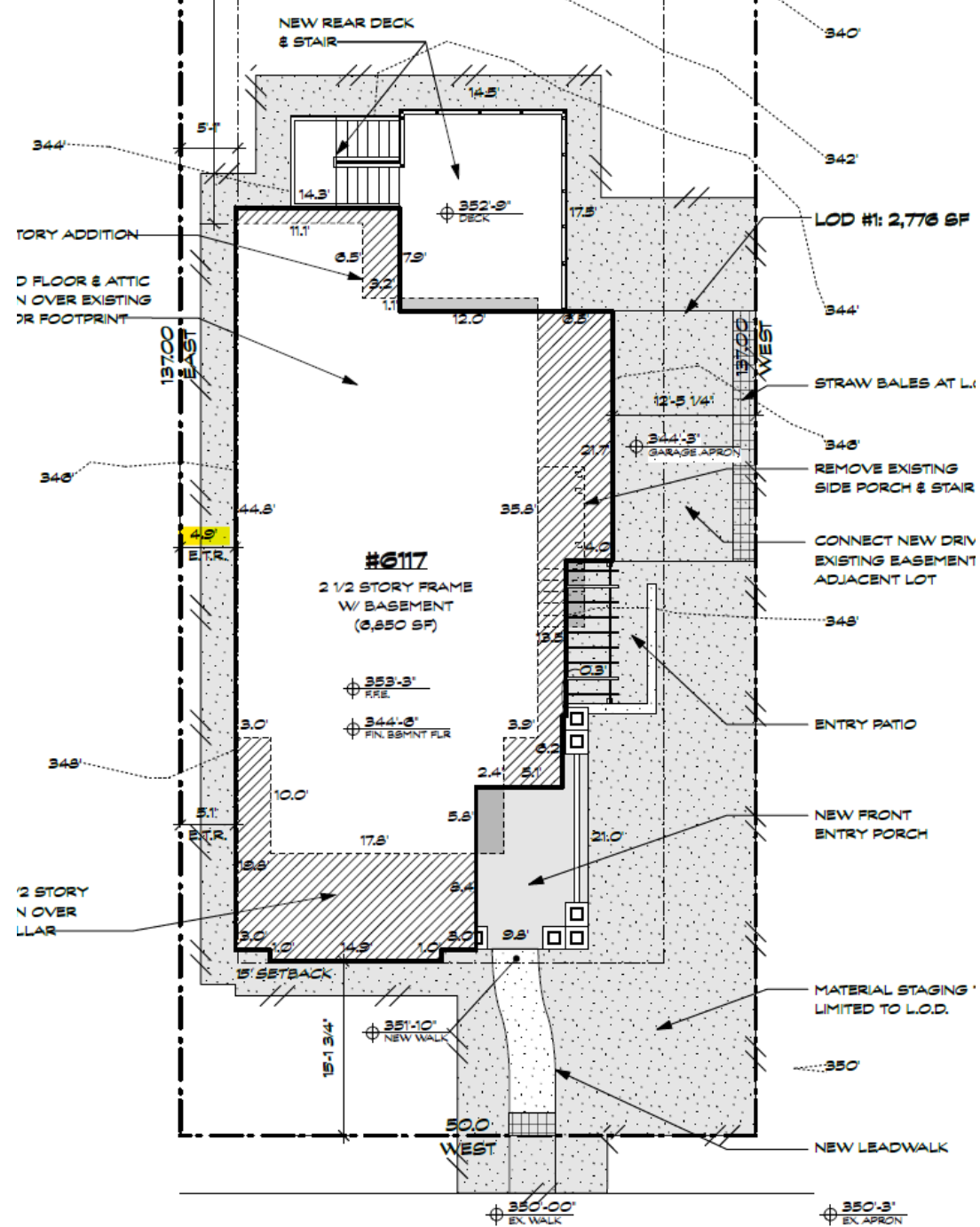


Demo Elevations

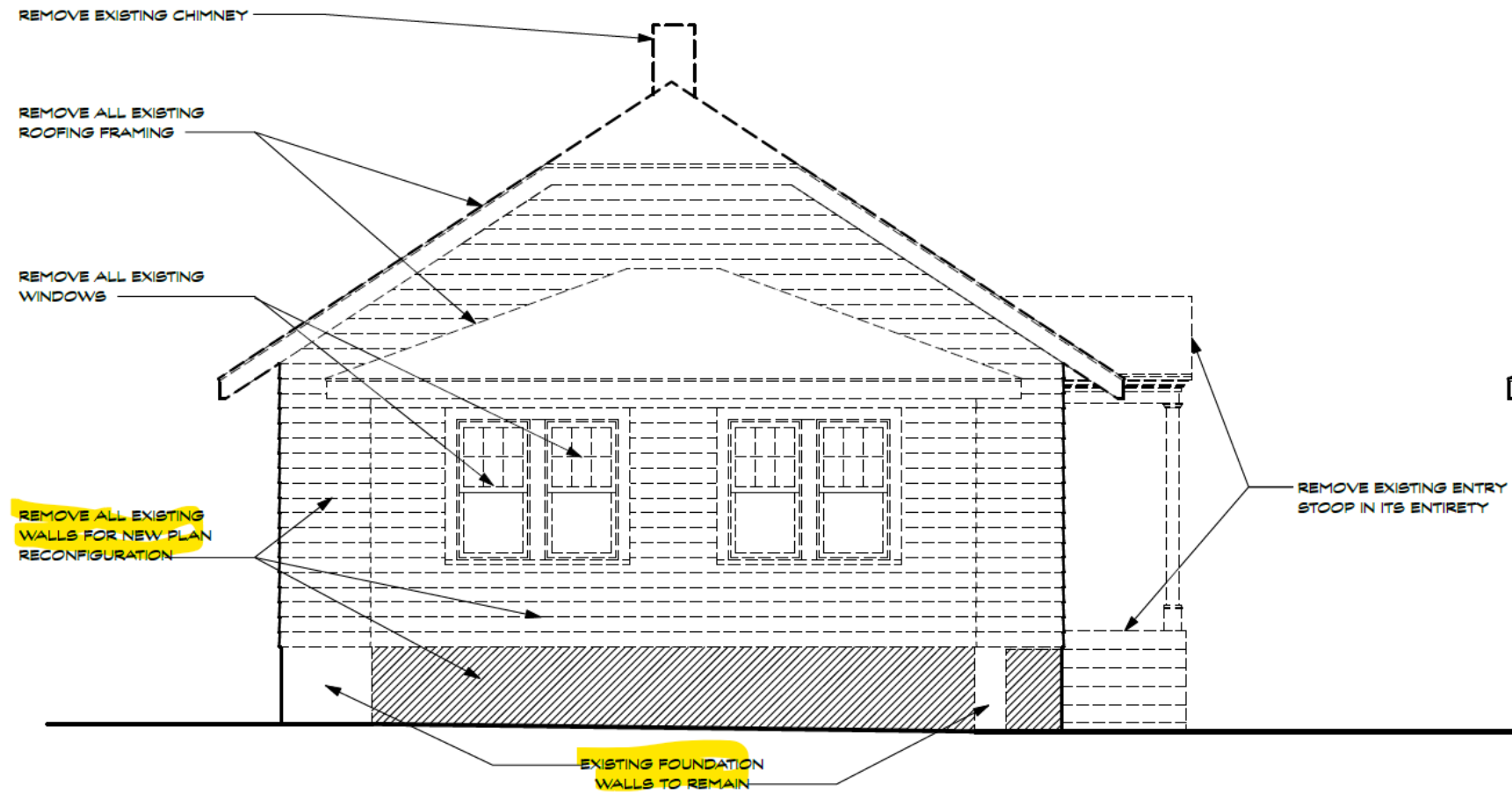


Permit No. B2504679 Date 9/15/2025

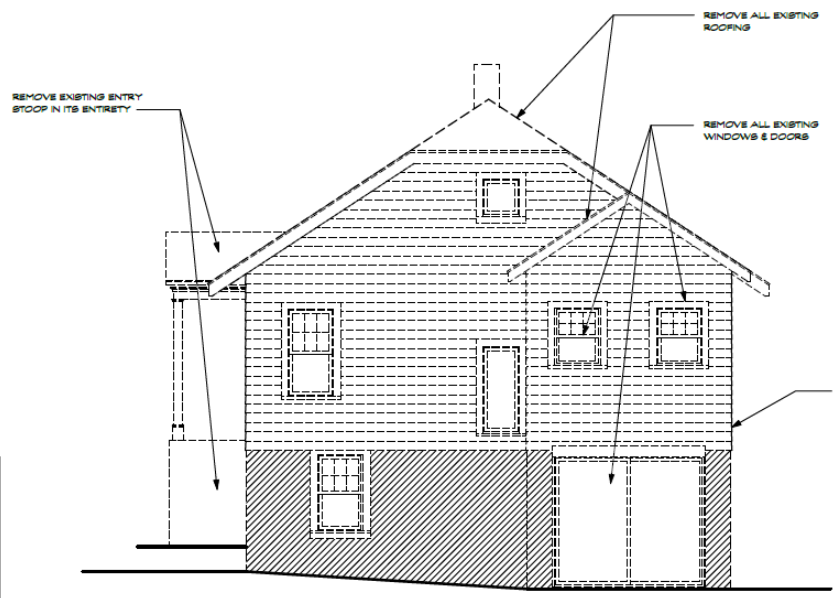
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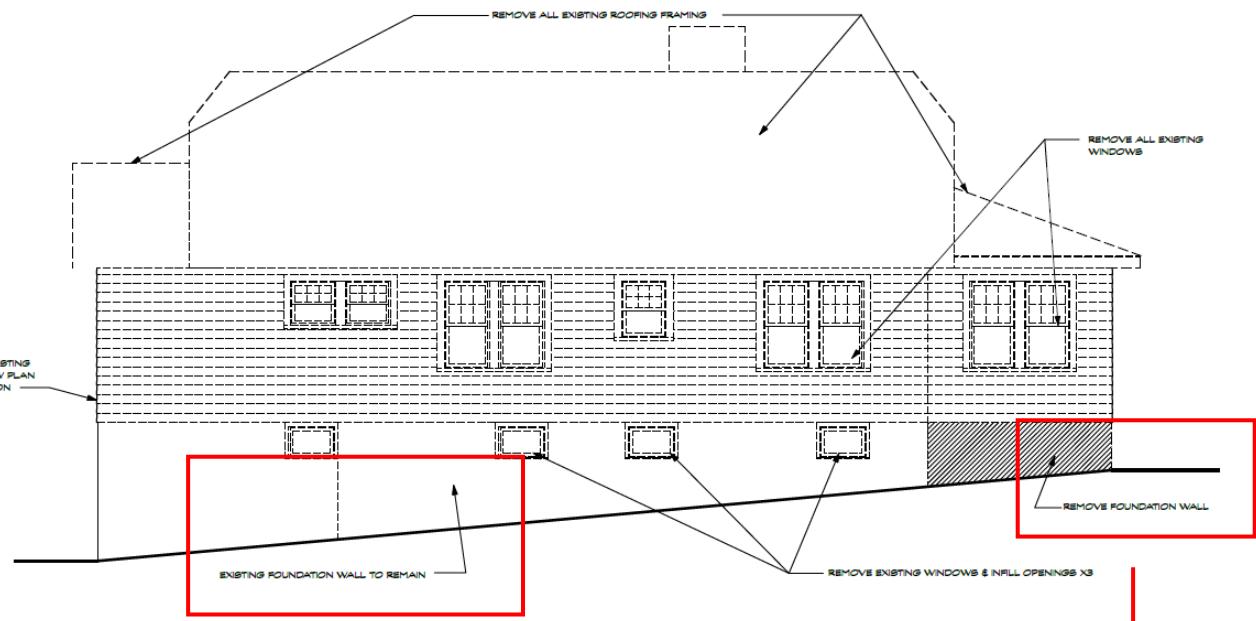
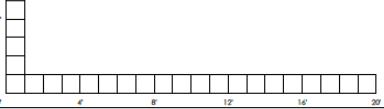
From Demolition Elevations- Sheet D200



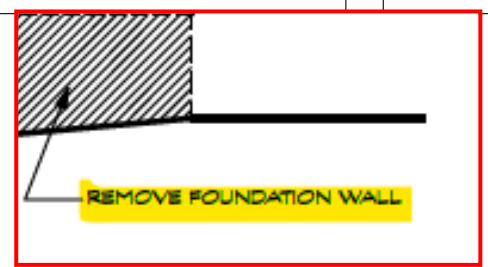
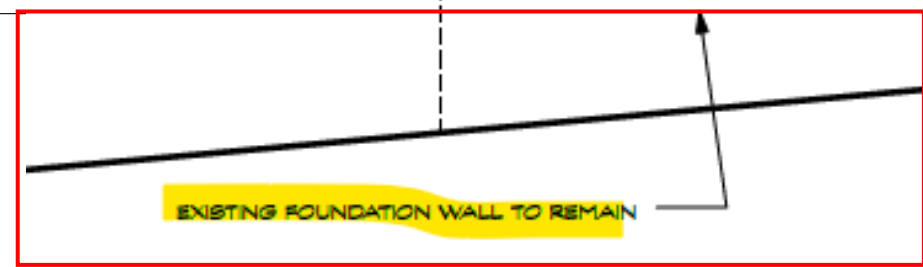
1 FRONT (WEST) DEMOLITION ELEVATION
Scale: 1/4" = 1'-0"



3 REAR (EAST) DEMOLITION ELEVATION
Scale: 1/4" = 1'-0"



4 SIDE (NORTH) DEMOLITION ELEVATION
Scale: 1/4" = 1'-0"



ROSENBAUM RENOVATION

6117 32nd Pl NW, Washington, D.C. 20015

Project #2401

DEMOLITION
ELEVATIONS

D200

PERMIT SET

25 March 2025



B

Department of Buildings
Permit Operations Division
1100 4th Street SW
Washington DC 20024
Tel. (202) 671 - 3500



THIS PERMIT MUST ALWAYS BE CONSPICUOUSLY DISPLAYED AT THE ADDRESS OF WORK UNTIL WORK IS COMPLETED AND APPROVED

PERMIT NO.: B2504679



Issue Date: 9/23/2025
Expiration Date: 09/23/2026

Address of Project: 6117 32ND PL NW		Zone: R-1B	Ward: 4	Square: 2019	Suffix: 	Lot: 0008
Permit Restrictions: YEARBUILTPRIOR1978						
Permission Is Hereby Granted To: Rosenbaum, Paul F		Owner Address: 6117 32ND PL NW WASHINGTON, DC 20015		PERMIT FEE: \$7,235.40		
Permit Type: Addition Alteration Repair	Existing Use: One Family	Proposed Use: One Family with Accessory Dwelling Unit (ADU)	Building Construction Type: Not Applicable		Floor(s): 0	
Agent Name / Address: Matthew Buehler 614 St Andrews Lane		Contractor Name / Address : JOSEPHINO'S HOMES, LLC. 12811 EVANSTON STREET ROCKVILLE, MD 20853		Existing Dwell Units: 1	Propose d Dwell Units: 2	No. of Stories: 0
Description Of Work: Complete interior remodel and addition to existing single-family home. All new building systems and finishes. Home will be unoccupied during construction.						
EXTERIOR SC Demolition Doors Driveway Exterior Steps Roof Windows		INTERIOR S Basement Renovation Bathroom Remodeling Convert Basement into a Unit Dry Wall- Sheetrock Interior Demolition Kitchen Renovation Room Additions Whole House Remodeling				
Conditions/ Restrictions: AN 'ABOVE GRADE' WALL CHECK IS REQUIRED BY THE BUILDING CODE FOR THIS BUILDING PERMIT AND MAY BE REQUIRED FOR REVISIONS THAT IMPACT THE BUILDING FOOTPRINT. The owner may not schedule a DCRA or Third Party foundation or framing inspection without a DCRA approved 'above grade' wall check . Pursuant to U-253, either the principal dwelling or accessory apartment unit shall be owner-occupied for the duration of the accessory apartment use. Pursuant to U-253.6, The total number of persons that may occupy the accessory apartment shall not exceed 4. Before starting any land disturbance, you must complete a DOEE pre-construction inspection. To schedule, go to doee.dc.gov/SGS and click the "Request a Pre-Construction Inspection" button. Attach a copy of your issued DOB permit.						
This permit expires if no approved inspections have occurred within one year after the issuance date on this permit or 180 days for structures built under the Residential Code. A permit extension must be requested before the expiration of this permit.						
As a condition to the issuance of this permit, the owner agrees to conform with all conditions set forth herein, and to perform the work authorized hereby in accordance with the approved application and plans on file with the District government, and in accordance with all applicable laws and regulations of the District of Columbia. The District of Columbia has the right to enter upon the property to inspect all work authorized by this permit, and to require any change in construction which may be necessary to ensure compliance with the permit and with all the applicable regulations of the District of Columbia. Work authorized under this permit must start within one (1) year of the date appearing on this permit or						



Site plan showing building footprint and dimensions. The plan includes a 2ND FLOOR (ADDITION) and an EXIST. BLDG. (DEMOLOSHED). The building is situated on a lot with dimensions 137.0 by 50.0. The plan also shows a 1 STY. (ADD.) and a PORCH. Dimensions are provided for various sections of the building and lot.

Annotations:

- 2ND FLOOR (ADDITION)
- EXIST. BLDG. (DEMOLOSHED)
- 1 STY. (ADD.)
- PORCH

Dimensions (feet):

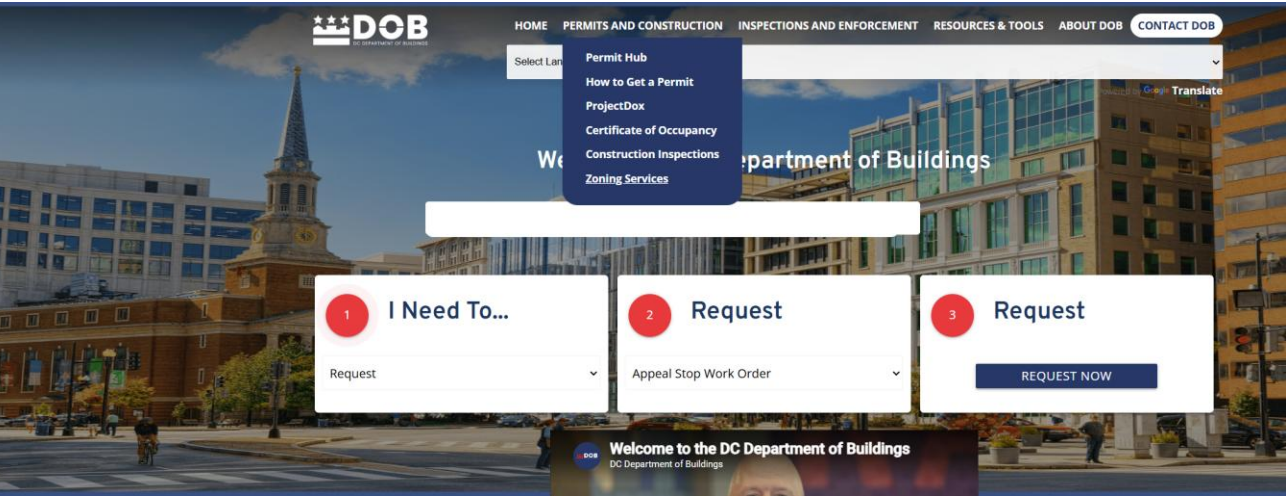
- Lot dimensions: 137.0 (width), 50.0 (depth)
- Building dimensions: 14.51, 17.25, 10.0, 44.80, 1.29, 11.10, 14.04, 5.30, 6.5, 9.30, 12.0, 14.12, 6.5, 34.55, 35.8, 0.35, 3.9, 6.17, 7.54, 14.20, 10.0, 20.45, 14.30, 2.0, 16.22, 137.0, 14.36, 16.51, 15.45, 2.1/2 STY. (ADD.), 16.50

Other labels: REST., BLDG., LINE, 15', 50.0, 8, 11/21/2022

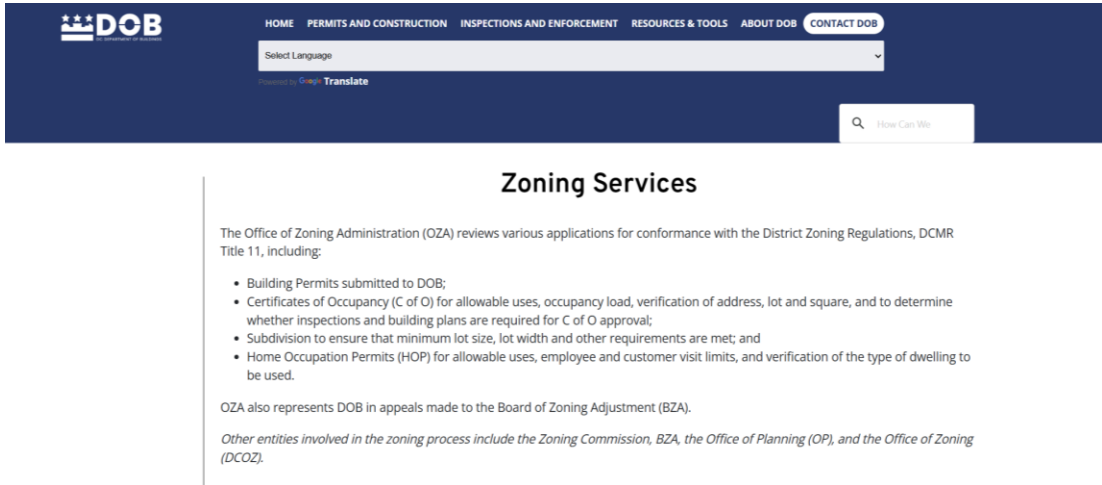


Buried deep within DOB's website

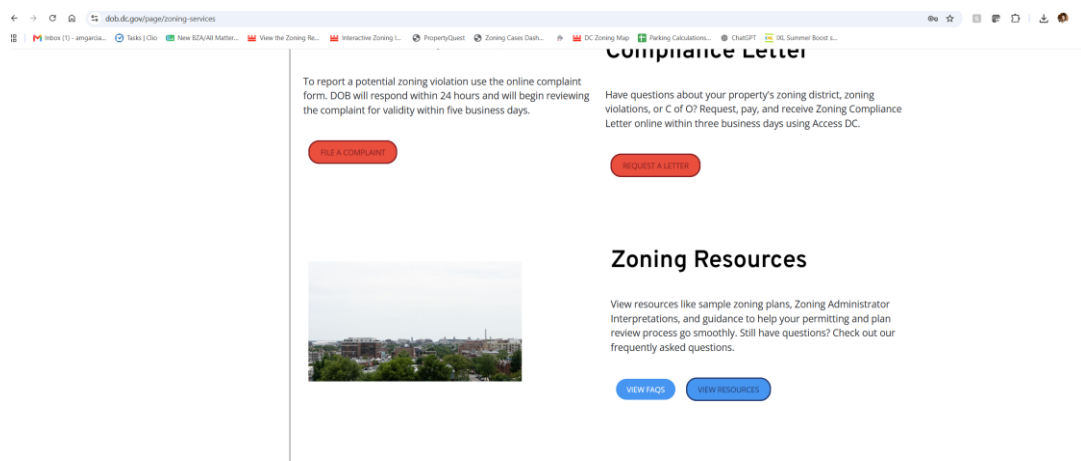
DOB Website>Permit and Construction> Zoning Services



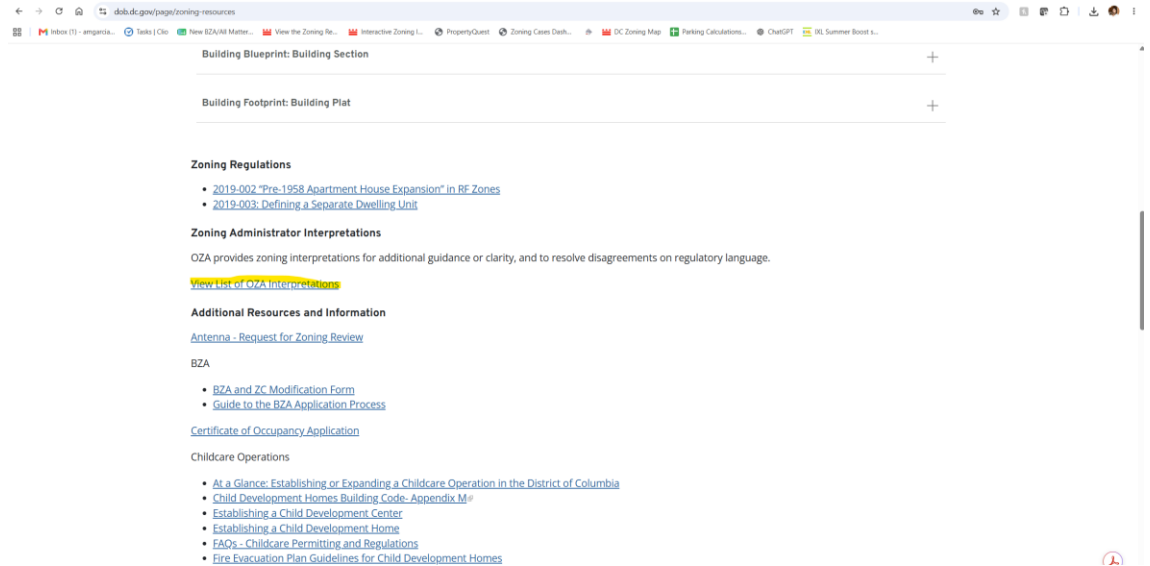
Zoning Services explanation doesn't even include the information right away...



Buried at the bottom of the page...



Then there is a link to ZA Interpretations in the middle of that page...



From there...

Zoning Administrator Interpretations

The Office of Zoning Administration (OZA) provides zoning interpretations as additional guidance to applicants when zoning regulations are unclear, in order to allow for consistency and transparency in applying zoning regulations. Interpretations may also be needed when there is disagreement about the meaning or applicability of a particular regulation. For more information on the zoning rules go to [Zoning Resources](#).

1: Roof Membrane and Building Height	+
2: Balconies and GFA	+
3: Bay Windows	+
4: Meaning of Abut	+
5: Use of Parapet as Roof top deck Railings without Setback	+
6: Pergolas and Trellis Cross Member Spacing to be Excluded from Lot Occupancy	+
7: Rooftop Architectural Element	+
8: Driveway Widths and One-Way vs. Two-Way Circulation	+
9: Rooftop Dining Areas Adjacent to Partial Floors	+
10: Demolition vs Raze for Zoning Purposes	+

Tuesday, October 1, 2019

Reference:

ZA-010

The razing or complete removal of a building has certain zoning consequences, [e.g. loss of any rights associated with a non-conformity, and/or the loss of parking credit] because an existing building that is referenced in a zoning regulation would no longer exist. Any new building would be subject to the Zoning Regulations in effect at the time it is constructed. The following Zoning Administrator Interpretation establishes the minimum threshold at which the demolition of a building is not considered a raze, or the complete removal of a building:

- In cases of a partial demolition of a building in which the footprint is not being expanded, at least four (4) feet of height of the enclosing perimeter walls [as measured from existing grade adjacent to and outside those walls] must be retained so as not to constitute a complete removal of a building or a zoning raze.
- In cases of a partial demolition of a building in which the footprint is being expanded and therefore some of the enclosing perimeter walls are being completely removed, the Office of Zoning Administration will, on a case-by-case basis, review the percentage of the removal of the building's enclosing exterior wall area and determine a minimum percentage of wall area that has to be retained. Generally, a minimum of 40-50% of the existing enclosing exterior wall area must be retained, so as not to constitute a complete removal of a building or a zoning raze.

The Office of Zoning Administration must be informed whether the building's footprint is changing and, if so, the percentage of the removal of the total building's

Building Code Definitions

District of Columbia Municipal Regulations

202 GENERAL DEFINITIONS

202.1 Revised definitions. The definitions of the following terms in Section 202 of the *International Building Code* are deleted and new definitions are inserted in their place in Section 202 of the *Building Code*.



ADDITION. An extension or increase in the building area, aggregate floor area, number of stories, or height of a building or structure.



DEMOLITION, PARTIAL. Work of a greater scope than *demolition interior* that includes the removal of structural elements (interior or exterior), exterior walls, roofs, or other exterior elements but is not a *raze*.



RAZE. The complete removal of any existing structure, with or without the removal of party walls and below grade portions of a structure.

PERMIT NO.

17-01-01

DISTRICT OF COLUMBIA

Washington, D. C., 12 22 1927

Plat,

for Building Permit of

101 8 89 2019

Recorded in Book

CO 21

page 22

S. O.

41869

38nd Place

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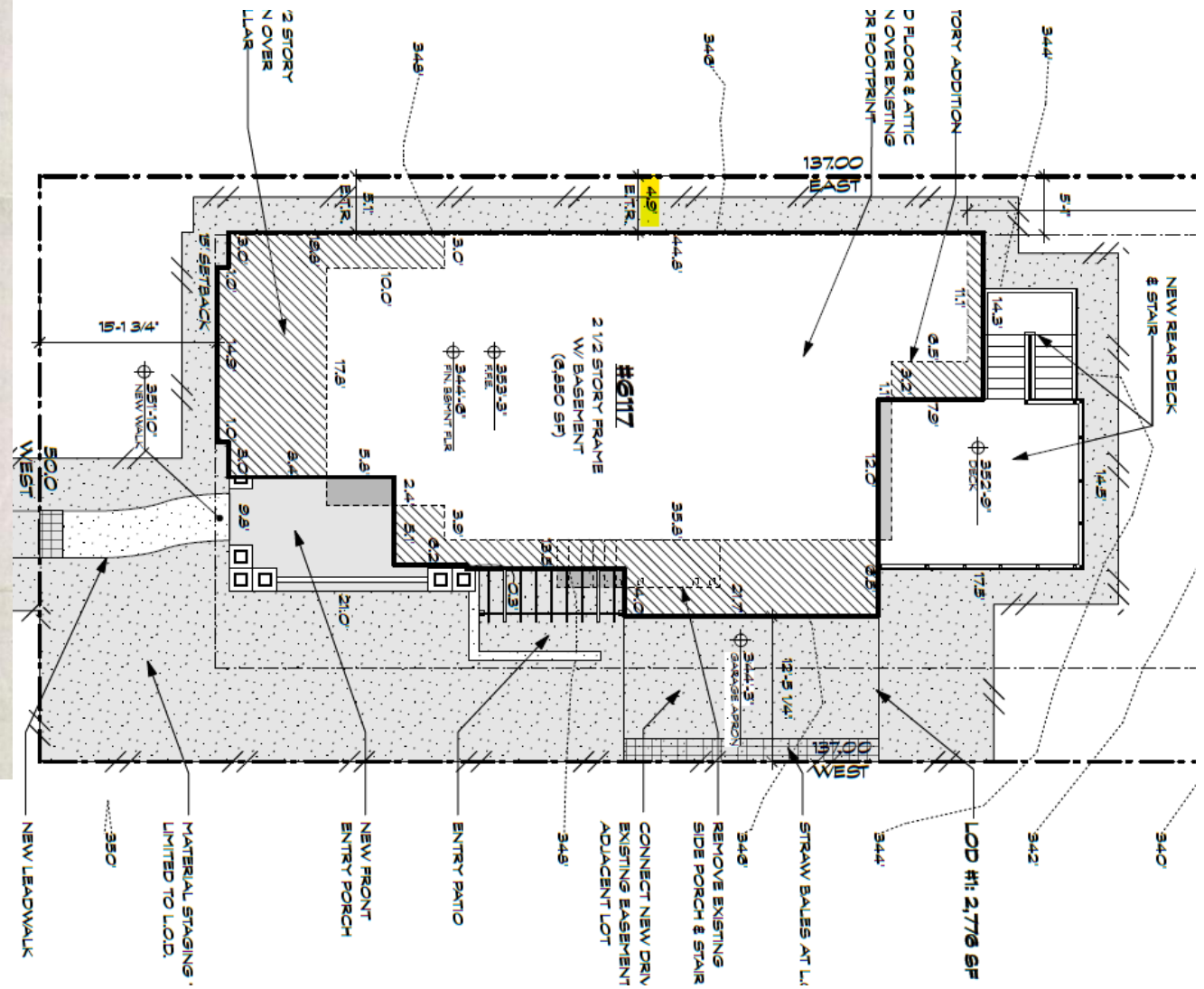
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25

137



208

SIDE YARD

- 208.1 Except as provided elsewhere in this title, the minimum side yard requirements shall be as set forth in this section.
- 208.2 Two (2) side yards, each a minimum of eight feet (8 ft.) in width, shall be provided for all detached buildings.
- ...
- 208.7 In the case of a building with a non-conforming side yard, an extension or addition may be made to the building; provided, that the width of the existing side yard shall not be reduced or eliminated; and provided further, that the width of the side yard adjacent to the extension or addition shall be a minimum of five feet (5 ft.).

Community & Neighbor Support

- ANC is supportive
- Broad neighbor support, 11 support letters, including the neighbor to the north.
- From Exhibit 28:

I am the next door neighbor to 6117 32nd Place NW and the renovation project of the Rosenbaums. I'm familiar with the project status and would like it be known I have no objection to the variance they've applied for, no objection at all.

It would be great to see the house get completed soon.

-Owen Klein
6121 32nd Pl NW, Washington, DC 20015

Legal Framework: Equitable Estoppel

- Equitable estoppel is a doctrine rooted in fairness. The principle is straightforward: a government that induces reasonable reliance — by issuing a permit, approving plans, conducting a full review and signing off — cannot later reverse course and penalize the party who acted in good faith on that approval.
- A leading case in the District is *Saah v. D.C. Board of Zoning Adjustment*, 433 A.2d 1114, decided by the DC Court of Appeals in 1981.
 - *“Although the doctrine of equitable estoppel has traditionally not been favored when sought to be applied against a government entity... it is accepted that in certain circumstances an estoppel may be raised to prevent enforcement of municipal zoning ordinances.”*
— *Saah v. D.C. Bd. of Zoning Adjustment*, 433 A.2d 1114, 1116 (D.C. 1981)

Elements of Estoppel

- The Court of Appeals has recognized that while estoppel is not applied loosely in the zoning context — the public interest in enforcement matters — it is absolutely available and required where the elements are established.
- The four elements:
 1. Party acted in good faith.
 2. There was a affirmative act of the municipality — typically a permit or official approval.
 3. The party made expensive and permanent improvements in justifiable reliance on those acts.
 4. The equities favor the party claiming estoppel.

How does Estoppel fit the Area Variance Test?

- BZA Application No. 19521-A and the subsequent order provides an excellent analysis of how this fits.
- Summary of the case:
 - Homeowner received a zoning approval and permit to build a second-story accessory apartment above a garage.
 - Homeowners relies on that zoning approval, signs contracts, and spends approximately \$60,000.
 - The permit was then cancelled mere days after issuance when the Zoning Administrator identified a height provision the applicant and DCRA had both missed.
- 19521-A facts are much weaker than the subject case with the Rosenbaums in terms of timing and reliance (i.e. *days vs. months; hundreds of thousands vs. \$60k*)
- In that case, the Board granted the variance. And in doing so, it explained exactly how good-faith detrimental reliance maps onto each prong of the variance test.

Estoppel & Prong One: Exceptional or Extraordinary Condition

- The variance test requires an exceptional or extraordinary condition affecting the property. The Board in 19521-A held that this condition does not have to be a physical characteristic of the land. It can arise from events extraneous to the land — including a property’s permitting history.
 - *“For purposes of variance relief, the ‘extraordinary or exceptional situation’ need not inhere in the land itself. Rather, the extraordinary or exceptional conditions that justify a finding of uniqueness can be caused by subsequent events extraneous to the land at issue, provided that the condition uniquely affects a single property.”* — BZA App. No. 19521-A at p. 8
- And the Board was explicit that good-faith detrimental reliance on a government’s erroneous zoning action is precisely the kind of subsequent event that qualifies:
 - *“‘Good faith detrimental reliance on zoning actions’ can be ‘taken into account in the uniqueness facet of the variance test.’”* — BZA App. No. 19521-A at p. 9 (quoting *Monaco v. D.C. Bd. of Zoning Adjustment*, 407 A.2d 1091, 1098 (D.C. 1979))
- The Board also described *De Azcarate* — a Court of Appeals case — as the foundational example of how this works in practice:
 - *“De Azcarate involved a ‘dispute [that] was due to the actions of the zoning officials which were later found to be in error.’ Zoning officials had ‘implicitly found’ that a proposed project complied with the zoning code. The property owners proceeded ‘in good faith’ in reliance on these approvals, only for the error to be detected later. The Board found that these circumstances met the uniqueness test for a variance to allow the project to be completed, and the Court of Appeals affirmed.”* — BZA App. No. 19521-A at p. 9 (describing *De Azcarate v. Bd. of Zoning Adjustment*, 388 A.2d 1233, 1238 (D.C. 1978))

Estoppel & Prong Two: Practical Difficulty

- For area variances, the standard is practical difficulty — lower than the undue hardship required for use variances. The Board in 19521-A held that good-faith detrimental reliance feeds directly into this prong as well:
 - ***“The showing of ‘practical difficulties’ required for an area variance is a ‘lower’ standard than the undue hardships required for a use variance. ‘[G]ood faith, detrimental reliance on the zoning authorities’ informal assurances may be taken into account in assessing... undue hardship.’ It therefore stands to reason that such good faith detrimental reliance may be taken into account in assessing the less demanding practical difficulties test for an area variance as well.”*** — BZA App. No. 19521-A at p. 10 (quoting Monaco, 407 A.2d at 1101)
- The Board also explained the factors it considers in evaluating practical difficulty — including the cost burden on the applicant and the severity of the variance itself:
 - ***“The Board ‘may consider a wide range of factors in determining whether there is an “unnecessary burden” or “practical difficulty.”’ These factors include ‘[i]ncreased expense and inconvenience to applicants for a variance,’ and ‘the severity of the variance(s) requested.’”*** — BZA App. No. 19521-A at p. 10 (quoting St. Mary’s Episcopal Church v. D.C. Zoning Comm’n, 174 A.3d 260, 271 (D.C. 2017); Gilmartin v. D.C. Bd. of Zoning Adjustment, 579 A.2d 1164, 1171 (D.C. 1990))
- In 19521-A, the Board found that approximately \$60,000 in pre-construction expenditures — deposit, cabinets, solar contract — would be rendered wasteful if the variance were denied, and that this constituted the required practical difficulty. The Board then balanced that hardship against the severity of the variance, found the variance modest, and concluded the balance favored relief.

Estoppel & Prong Three: No Substantial Detriment to the Public Good or Integrity of the Zoning Regulations

- The third prong asks whether relief can be granted without substantial detriment to the public good or impairment of the zone plan. In 19521-A, the Board found no detriment for several reasons: the variance was modest in scope, the building height remained compliant, and no immediately adjacent neighbors opposed the project.
- The Board also addressed what to do when an ANC opposes. ANC 2E opposed the variance in 19521-A on the grounds that it would “open the door” to similar relief throughout the zone. The Board gave that concern great weight but was not persuaded, finding:
 - ***“The Board has concluded that the Applicant’s case is unique and will not result in the widespread granting of similar zoning relief throughout the R-20 Zone.”*** — BZA App. No. 19521-A at p. 12
- And the Board rejected the self-created hardship argument the ANC raised — an argument that may come up in any estoppel case:
 - ***“While courts have held that ‘[a] self-inflicted hardship... will not support the grant of a use variance,’ Applicant is seeking an area variance and ‘the rule of self-created hardship does not apply to the grant of area variances.’... We have also concluded that unique hardships that Applicant faces are not solely of his own creation, but also arise from his ‘reliance on actions of the zoning authorities.’ In such circumstances, the self-created hardship rule is inapplicable.”*** — BZA App. No. 19521-A at p. 13-14 (quoting *Washington Canoe Club v. D.C. Zoning Comm’n*, 889 A.2d 995, 1001 (D.C. 2005); *Monaco*, 407 A.2d at 1101)

The Board's Own Limiting Caveat(s)

- The Board in 19521-A was careful to note that this analysis does not automatically entitle every applicant who has relied on an erroneous permit to variance relief:
- *“Good-faith reliance on erroneous actions of the DCRA will not always entitle a property owner to variance relief. Factors such as the reasonableness of the mistake, the degree of the hardship, and the severity of the variance relief requested are all relevant factors that, in addition to others will need to be considered in a future case.”* — BZA App. No. 19521-A at p. 14
- **In the subject case, every one of those factors — reasonableness of the mistake, degree of hardship, severity of the variance — this case is stronger than 19521-A.**
- The Office of Planning supported that grant. Here is what OP said in its report in that case:
- *“The Office of Planning recommends approval of the following area variance... The applicant has demonstrated good faith reliance on DCRA’s erroneous zoning clearance of the building permit application, and denial of the variance would result in practical difficulties... the accessory structure would be no taller or larger than what is permitted... OP concludes that the applicant has met the burden of proof.”* — Office of Planning Report, BZA Case 19521-A, July 13, 2018
- Similarly, the case *Beins v. DC BZA* has, in one past BZA order, been quoted for the proposition that estoppel is “judicially disfavored” in the zoning context. That language describes a standard of rigor, not a rule of exclusion — *Beins* simply requires that the elements be genuinely established before relief is granted, and neither *Beins* (nor the *Goto* decision it cites in that particular order) holds that the BZA lacks authority to grant estoppel when those elements are met. The concern in those cases is property owners exploiting a regulatory gap to evade legitimate enforcement; that is not this case — **the Rosenbaums concealed nothing, exploited nothing, and face a reversal caused entirely by DOB's own admitted error.**

Case Comparison Table						
Estoppel/ Detrimental Reliance Variance Elements	Saah v. BZA Court of Appeals (1981)	BZA Case no. 18570 (2013)	BZA Case no. 18725 (2014)	BZA Case no. 19521-A (2018)	BZA Case no. 20813 (2023)	BZA Case no. 21440
Description	Court of Appeals overturns the BZA’s denial of a variance based on the estoppel argument.	BZA grants variance from the 900 ft rule based on estoppel/detrimental reliance argument.	BZA grants 97% lot occupancy variance based on estoppel/detrimental reliance argument.	BZA grants variance for additional story for accessory apartment use based on estoppel/detrimental reliance argument.	BZA grants variance relief from the requirement to retain architectural element based on estoppel/detrimental reliance argument.	Applicant seeks side-yard variance relief based on estoppel/detrimental reliance argument.
Affirmative Act (Prong 1)	Permit issued including zoning approval	Permit issued including zoning approval	Permit issued including zoning approval	Permit issued including zoning approval	Permit issued including zoning approval	Permit issued including zoning approval
Applicable Regulation (Prong 1)	Lot Occupancy Limit	900 ft Rule	Lot Occupancy Limit	Accessory Apartment Use	Architectural Elements	Extra-regulatory Statement
Time Between Permit Issuance and Notification of Error (Prong 2)	2 months	8 months	5 months	Days after pickup	7 months	3 months
Construction Completion % Upon Notification of Error (Prong 2)	~60% complete	100%	Pre-construction	Pre-construction	Substantially complete	Approved demolition irreversible
Resulting Expense (Prong 2)	~\$110,000	\$315,900	\$7,800	\$60,000	\$536K	\$330K+ direct; ~\$1M+ total
Degree of Relief/Equities (Prong 3)	Significant	Substantial	Substantial	Significant	Substantial	Zero or 3 ft.
ANC (Prong 3)	NA	Opposed	Support	Opposed	Opposed	Support
Community/Neighbor Support (Prong 3)	NA	Support from 24 neighbors	Immediate Neighbor Opposition	Adjacent neighbor supported	Neighbor Support	11 households + adjacent neighbor; no opposition
OP Position	NA	Recommended Approval	Recommended Denial	Recommended Approval	Recommended Approval	[To be confirmed]
Outcome	BZA Denial Overturned	Relief GRANTED	Relief GRANTED	Relief GRANTED	Relief GRANTED	

Application to the Subject Case

Prong One: Exceptional Condition (Zoning History, Including Issuance in Error and Subsequent Retraction to the Detriment of the Permit Holder)

Prong Two: Practical Difficulty (Financial Consequences to the Owner from Prong One)

Prong Three: No Substantial Detriment to Public or the Integrity of the Zone Plan (Neighbor Support, Unique Situation, Low Degree of Relief)

Prong One: Exceptional Condition

The Permitting History

- As established, the exceptional condition can arise from factors extraneous to the property.
- The exceptional condition here is the property's unique permitting history. DOB conducted a full plan and zoning review.
- The permit issued on September 23, 2025, expressly approving the project as an addition, alteration, and repair.
- The Rosenbaums proceeded to demolish and construct exactly what was approved.
- DOB then reversed course three months later — not because anything new was discovered, but because the same plans that had already been approved were reviewed again and a different conclusion was reached.

Prong One Continued

- In 19521-A, the Board found that an exceptional situation exists as a result of the property's unique zoning history. The Applicant in that case relied in good faith on the erroneous actions of DCRA in clearing the building permit for zoning.
- That factor is also present in this case as the Rosenbaums relied in good faith on a fully-issued permit — not just a zoning clearance, but a signed permit after a complete zoning review.
- The interpretation that DOB applied 3 months retroactively — ZAI-10 — is not in the Zoning Regulations at all. It is the only one of thirty-two Zoning Administrator Interpretations that is not anchored to any regulatory text.
- “Good faith detrimental reliance on zoning actions” can be “taken into account in the uniqueness facet of the variance test.” *Monaco*, 407 A.2d at 1098.
- “*Good faith reliance on issuance on ‘actions of city officials,’ including issuance of building permit, satisfied first branch of variance test.*” — *Oakland Condo. v. D.C. Bd. of Zoning Adjustment*, 22 A.3d 748, 754 (D.C. 2011), cited in BZA App. No. 19521-A at p. 9
- **This prong is satisfied.**

Prong Two: Practical Difficulty

- As discussed in 19521-A (citing Monaco, St. Mary's, and Gilmartin), the cost of the burden of compliance can be weighed against the severity of the variance requested. Detrimental reliance can be taken into account.
- In 19521-A, the practical difficulty was approximately \$60,000 in pre-construction expenditures that would be wasted if the variance were denied. The Board found that sufficient.
- In this case, substantially higher expenditures as compliance would require:
 - Demolition of the retained north wall — the only original wall remaining
 - Relocation of the entire structure three feet to the south
 - Loss of existing building area that has already been constructed
 - Full redesign, re-permitting, and reconstruction from the ground up
 - Additional construction cost
 - Total financial exposure including all work already completed that would be rendered wasteful (hundreds of thousands).

Prong Two Continued

- And critically — unlike in 19521-A, where the permit was cancelled before construction began — here the demolition that triggered the reclassification is already done and cannot be undone. There is no pathway to compliance that does not require starting over entirely.
- On the severity side: in 19521-A, the Board described the variance as “far from severe” because the building height complied — only the interior division was at issue.
- Here, the variance is equally modest. We are asking to maintain a five-foot side yard that has existed on this property for one hundred years, that the adjacent neighbor supports, and that the Zoning Regulations would permit outright under Section 208.7 but for DOB’s retroactive reclassification.
- *“The Board concludes that the practical difficulties that the Applicant would face from denial of the variance outweigh the severity of the variance sought.”* — BZA App. No. 19521-A at p. 11
- The same conclusion follows here, and more easily. \$60,000 was enough in 19521-A. Hundreds of thousands in total exposure — for a side yard that has existed for a century and that would otherwise be permitted to be extended — is more than enough here.
- The degree of relief can be considered, too and weighed against cost of compliance as part of the practical difficulty. The side yard is only 3 feet shy of meeting the 8-foot requirement for new construction. **This prong is satisfied.**

Prong Three: No Substantial Detriment; No Harm to the Zone Plan

- The 4.9 -foot side yard being maintained has existed on this property for approximately one hundred years. The 5-ft width extension is permitted in the regulations for additions.
- The project complies with every other R-1B development standard — height, lot occupancy, rear yard, south side yard, parking.
- The adjacent neighbor — the Kleins, along the very side yard at issue — submitted a letter in support. Ten other households have submitted letters of support.
- As the DC Court of Appeals has held, any public harm from non-enforcement must be actual and non-speculative:
- *“For the equities to favor the party claiming an estoppel, any injury to the public that would flow from the non-enforcement of the zoning law must be minimal and outweighed by the injury estoppel would avoid. Moreover, the injury must be ‘actual,’ and not ‘speculative and unsubstantiated.’”* — W. End Citizens Ass’n v. D.C. Bd. of Zoning Adjustment, 112 A.3d 900, 904-05 (D.C. 2015)
- There is no actual, non-speculative public harm here. No neighbor objects. No safety issue exists. No new condition is being introduced. The zone plan is not harmed by allowing a side yard to remain in the position it has occupied for a century.
- **This prong is satisfied.**



Prong Three: No Substantial Detriment; No Harm to the Zone Plan

- The second part is the integrity of the zoning regulations and it has the same answer: 5 ft is permitted as a matter of right. This is an extremely rare occurrence. This is an extreme example of an estoppel variance case, perhaps never seen to this degree before. Again a 5 ft side yard is already permitted and if this had not been missed the applicant could have even asked for a special exception for an even smaller side yard, perhaps to continue it for point nine.
- Prong Three aligns directly with the Equities analysis, as it defines the interest that the city has in protecting the public and in protecting the integrity of the zoning regulations.

Conclusion

- Variance test is safely met:
 - Prong One: Unique Permitting History, Good Faith Present
 - Prong Two: Detrimental Reliance (hundreds of thousands) considering expended costs + additional required costs if relief is not granted
 - Not self-inflicted, justifiable reliance
 - On balance (severity of relief vs. practical difficulty), clearly weighs in the Applicant's favor as the request is to maintain the status quo of the existing width of the side yard
 - Prong Three: Neighborhood support, no impact to the zone plan as this would have been allowed if we maintained an additional 20% of the perimeter walls, could have done this exact same project by right. Equities clearly weigh in the Applicant's favor.