

**Before the District of Columbia
Board of Zoning Adjustment**

APPEAL BY:	)	
	)	
	)	
Advisory Neighborhood Commission 3D	)	BZA Case No.
and Frank Moore	)	
	)	
Of DOB's Issuance of Building Permit	)	Hearing Date:
No. B2603167	)	
	)	

Appellant's Statement of Appeal

I.

Introduction

Advisory Neighborhood Commission 3D ("ANC3D") and Frank Moore submit this statement in support of their appeal of the Department of Buildings' ("DOB") issuance of Building Permit No. B2603167 ("Building Permit" or "Permit") (Exhibit A). We believe the Permit was issued in error on several counts. Contrary to Section B-206.2 and Section C-201.1, the Permit allows a developer to use a nonconforming corner house to establish a front setback range for new construction at 4815 Tilden Street, NW. As a result, the developer is permitted to build a new house with a front setback 15 feet forward of all other houses on the same side of the block except for the nonconforming corner house. Additionally, contrary to Section A-301.3, the Permit is not issued to a Lot of Record.

II.

Jurisdiction of the Board

The Board of Zoning Adjustment ("Board" or "BZA") has jurisdiction to hear this appeal pursuant to 11-Y DCMR Section 100.4.

III.

Compliance with 11-Y DCMR Section 302.2

This application is made pursuant to 11-Y DCMR Section 302.2 of the Zoning Regulations and is timely thereunder. The Building Permit providing notice of the permitted construction was issued May 22, 2026. The Permit was posted on the premises of the property on or about June 2, 2026. This appeal is filed today, July 19, 2026, within sixty (60) days of the Permit issuance as allowed under Chapter Y, Section 302.2. (Hereafter, provisions of Title 11 of the DCMR, referring to the Zoning Regulations of 2016, will be cited by subtitle and section or subsection, as in “Section Y-302.2”.)

IV.

Description of Project and Permit Applicant Information

The owner of the property, The Kehoe Group 4823 Tilden St NW, LLC (“Developer”) (whose agent is named on the Building Permit as David Landsman, 4836 MacArthur Blvd, NW, Washington, DC, and whose contractor is named on the Building Permit as The Kehoe Group, 4511 Everett St, Kensington, MD 20895, the principal of which is Kevin Kehoe, whose business card identifies as President, The Kehoe Group, with email address as kevin@kehoe-group.com) proposes to replace the existing single family residential structure in the R-1-B Zone at 4823 Tilden Street, NW, Washington, DC 20016 (Lot 0811, Square 1503) with a new single family residential structure that will have an enlarged and repositioned footprint (“4823 Project” or “Project”).

V.

Background and Relevant Facts

The 4800 block of Tilden Street is in the R-1-B Zone. The existing house at 4823 Tilden Street, NW (the address of the Project), is a single-family residential structure on an interior lot, and has a front setback consistent with all other houses of the north side of the block, with the exception of a corner lot described below. The Developer has obtained permitting to raze the existing structure and build a new single-family dwelling. The approved front setback range for the new construction has been determined using the setback of a nonconforming house at the corner of 48th Street and Tilden Street. The corner house (“4801 Tilden”) is the forward-most house on the same side of the block and the only house not in general alignment with all others. It is further separated from the rest of the block by a public alley. It was not at the time the neighborhood was developed, nor is it today, an intended or visual part of the streetscape of the 4800 block of Tilden.

The lot (Lot 32, Square 1503) and house at 4801 Tilden are nonconforming in multiple respects. The lot width is less than the required 50-foot minimum and the lot area is less than the 5,000 square-foot minimum required for lots in R-1-B Zones. (See Section D-202.1.). It is oriented towards 48th Street (with the public alley running “behind” it and all the other lots facing 48th Street). The house, however, is facing Tilden Street, and because of the dimensions and size of the lot, the front of the house abuts the front lot line (it has no setback), and the back of the house is less than 25 feet from the rear lot line (contrary to the requirements of Section D-207.1). The house could not meet the rear yard requirements without extending approximately ten feet into the public space.

It is the front setback, or in fact, the lack of a front setback, of this nonconforming house at 4801 Tilden that the Zoning Administrator has incorrectly accepted as the basis for determining the front setback for the 4823 Project. The Permit allows the new construction to be

built 1.2 feet from the front lot line, 15 feet in front of every other conforming house on the block. As explained by the Zoning Administrator in response to a question about the setback from ANC3D Commissioner Duncan (see discussion below): *the established range of front setbacks for the block face ranges from face-on-the line to 15 feet and the subject property (the 4823 Project) is proposing a setback of 1.2 feet.*

VI.

Appellants Are Affected by the Issuance of the Building Permit

The Permit allows a new front setback at 4823 Tilden that is based on the setback of a nonconforming corner house. We are concerned about the ongoing trend of front setback creep threatening the scale and character of our neighborhoods. Many residents of our neighborhoods have expressed concerns about these new setbacks as they impinge on light and air of adjacent neighbors, change the scale and character of the neighborhood, and affect the appeal of not only the immediate block, but also the overall neighborhood, thereby reducing property values for everyone. Other projects in ANC3D neighborhoods have also used nonconforming corner houses to establish new front setbacks, extending nonconformities where none previously existed.

Both Appellants have attempted to address the setback issue. On March 2, 2026 ANC3D Commissioner Duncan sent an email to the Zoning Administrator asking if a nonconforming structure should be used to establish the front setback of another lot. Commissioner Duncan noted that ANC3D had recently heard from at least 10 neighbors expressing concern about the front setbacks of a number of new homes. She made the point that on many of our streets the corner lots are nonconforming because of lot size and dimensions, and therefore the houses on these lots are much closer to the street than all the other houses on the block: *We are seeing a ripple effect on some of our streets as new homes are pushing closer and closer to the street*

based off of a corner lot that is nonconforming. Without addressing the nonconformity issue, the Deputy Zoning Administrator responded: *In evaluating the blockface, we look at all residential buildings on the blockface and include corner properties.* (See Exhibit B.)

Appellant Frank Moore resides at 4815 Tilden Street, NW, next door to the Project. On June 2, 2026, Appellant Moore, a number of his neighbors on the 4800 block of Tilden Street, and others from the larger Spring Valley neighborhood sent an email to Kevin Kehoe asking him to reconsider the Project's front setback. (See Exhibit C.) The Spring Valley neighbors stated their concern that the proposed setback would negatively affect the neighborhood's scale and character and therefore negatively affect property values: *This setback is incompatible with a 75-year old streetscape established for the entire block. This streetscape contributes significantly to the appeal of the entire block and therefore the value of existing properties. And because Tilden Street is an entrance into Spring Valley from Massachusetts Avenue, any change of this significance also impacts the neighborhood at large.* Mr. Kehoe did not respond.

The Permit has also been issued in error to a Tax Lot (Lot 0811, Square 1503). It must be issued to a Lot of Record.

VII.

Issues on Appeal

1. A Nonconformity may not be used to determine the front setback range for another property under Section B-206.2.

Section D-206.2 establishes the rule for residential front setbacks in the R-1-B Zone: *For all residential buildings, a front setback shall be provided within a range of existing front setbacks of all residential buildings on the same side of the street in the block where the building is proposed.*

The 4823 Project proposes a front setback based on the front setback of the corner house at 4801 Tilden. 4801 Tilden is a nonconforming structure based on the size and dimensions of the lot and the rear and side yard setbacks. The term “nonconforming structure” is defined in part by the statement: *Regulatory standards that create nonconformity of structures include, but are not limited to, height of building, lot area, width of lot, floor area ratio, lot occupancy, setback, court, and residential recreational space.*

The front setback of 4801 Tilden is directly related to its nonconformities. The lot is essentially too small for a house facing Tilden Street. The front of the house abuts the front lot line (the house has no front setback, being “face-on-line”), while the rear of the house is less than the required 25 feet from the rear lot line (in violation of the rear yard requirements of Section D-207.1).

The front setback of 4801 is itself a nonconformity. Even though Section B-315.3 allows a corner lot owner to elect a front lot line from two street options, oriented facing Tilden Street, the house could only meet the rear yard requirements by projecting ten feet into the public space. The only way to build a house on the corner lot that meets side and rear yard requirements, with a front setback common to its neighbors, would be to orient it facing 48th Street.

Section C-201.1 states that a nonconforming structure may not be "used as a basis" for adding other structures prohibited elsewhere in the same zone: *Except as otherwise permitted in this chapter, nonconforming structures or uses may not be enlarged upon, expanded, or extended, nor may they be used as a basis for adding other structures or uses prohibited elsewhere in the same zone district.* (Underlined for emphasis)

Section C-201.1 applies to D-206.2. Section C-201.1 is limited only by its own exceptions ("Except as otherwise permitted in this chapter"), and there are none specified relative to Section 206.2 setbacks.

The general zoning rules in Subtitle C are intended to be applicable unless otherwise stated elsewhere in the Zoning Regulations. Section C-100.1 states: *Subtitle C provides general regulations applicable to all zones unless otherwise stated in this title.* Neither Section D-206.2 nor any other provision specifies that, despite Section C-201.1 and Section C-100.1, nonconforming structures may be used to determine a front setback.

Language on nonconformities in the Zoning Regulations, organized in Chapter 2 or Subtitle C, predates the current 2016 Zoning Regulations, whereas the front setback provisions of Section D-206 were adopted in 2016. At the time of consideration and adoption, the Zoning Commission and Office of Planning had the opportunity to, but did not, make a reference to or specifically include nonconforming structures in the text of Section D-206.2. Silence on the matter must lead to the conclusion that nonconforming structures are not included in Section D-206.2 calculations.

The use of the word “nor” in Section C-201.1 is instructive. The use of the term “nor” according to Webster's is “as a function word to introduce the second or last member ... of a series of items”. The word “nor” typically suggests an additional thought, separate from a previous one. After establishing that a nonconformity may not be enlarged, expanded, or extended where it currently exists, Section C-201.1 makes the additional point that the nonconformity cannot be used as the basis to add a nonconformity elsewhere in the same zone. To interpret Section C-201.1 any other way would make the use of “nor” redundant or irrelevant. It must be assumed that its use was intentional for the reasons stated above.

Likewise, the use of the word “elsewhere” is instructive. Having addressed nonconformities where they exist, it is clear that the intent of the second part of Section C-201.1 is to prohibit their use in establishing a nonconformity “elsewhere in the same zone,” or in the case of Section D-206.2 setbacks, elsewhere on the same block. There is no reason to use the word “elsewhere” but for the concern that an existing nonconformity might be used as the basis for establishing a nonconformity where one does not already exist.

Furthermore, the use of the term “residential buildings” rather than “structures” in Section D-206.2 is not a basis for concluding that nonconforming structures can be used. The term “residential building” is not itself defined in the Zoning Regulations. As a defined term, a “structure” includes a residential building, or restated, a “residential building” is a structure. A structure is defined as “anything constructed, including a building, the use of which requires permanent location on the ground ...”. Likewise, a “building” is defined as a “structure requiring permanent placement on the ground that has one or more floors and roof ...”. It cannot be assumed that the use of the term “residential buildings” was intended to include nonconforming structures or that it was intended to negate the intended applicability of Section C-201.1. Section C-100.1 requires an express statement to the contrary which Section D-206.2 fails to provide.

Finally, we note that there are general rules of measurement in Subtitle B of the Zoning Regulations, for example Section B-314 and Section B-315, which are instructive but cannot be used to weaken the protections of the general development standards for residential house zones found in Chapter 2 of Subtitle D.

2. Section D-206.2 requires the Zoning Administrator to provide a setback within the range of existing setbacks.

As noted, Section D-206.2 establishes the rule for residential front setbacks: *For all residential buildings, a front setback shall be provided within a range of existing front setbacks of all residential buildings on the same side of the street in the block where the building is proposed.*

The Zoning Administrator is required to approve a setback within the range of existing setbacks, but that does not guarantee an applicant the setback of its choice. Read within the context of Section D-101.2(a) and the Comprehensive Plan's policies LU-2.1.5 and RCW-1.1.1, Section D-206.2 gives the Zoning Administrator flexibility to consider other factors as to what specific front setback is approved.

Policy LU-2.1.5 states: *Carefully manage the development of vacant land and alterations to existing structures to be compatible with the general design character and scale of the existing neighborhood...* (Underlined for emphasis) Policy RCW-1.1.1 states: *Future development in both residential and commercial areas should be carefully managed to address the existing scale, function, and character of these neighborhoods.*

Section D-206.2 does not say that an applicant may choose a setback within the existing range or that the Zoning Administrator must approve any setback submitted so long as it is in the existing range; instead, it says that the setback provided must simply be in the existing range.

3. *The fact that the Zoning Administrator has previously allowed nonconforming structures to be used to determine the front setback range does not prevent the BZA from concluding that this has been the wrong interpretation and wrong application of Section D-206.2.*

The front setback provisions of Section D-206.2 were adopted by the Zoning Commission as part of the 2016 Zoning Regulations. As shown above, a nonconformity cannot be used to determine the front setback range. The fact that nonconformities have been used

previously does not create a controlling precedent over the plain meaning and clear intent of the Zoning Regulations. Nor does the fact that the Zoning Administrator's interpretation and application of Section D-206.2 has never been challenged establish the basis for accepting it for this Permit or any future permits.

It is also important to note that in the early years of Section D-206.2, new construction did not involve the large structures we are now seeing. Fewer projects pushed the limits of setbacks, lot occupancy and size. However, with the current trend, the sheer size of new construction (including the Project which is approved for 8,000 square feet) reveals the importance of front setbacks as a component of the Zoning Regulations' protection of a neighborhood's scale and character. And it is only with this trend that the flaw in the interpretation and application of Section D-206.2 has been revealed.

Finally, it bears repeating that the use of a nonconformity and the granting of a front setback without consideration of neighborhood scale and character are inconsistent with the Zoning Regulations and the Comprehensive Plan. Those who drafted the above-mentioned provisions, and those then on the Zoning Commission who approved the 2016 Zoning Regulations, did not intend to allow nonconformities to overrule the general standards for residential development. The Zoning Regulations and the Comprehensive Plan make clear that they developed these standards (those for setbacks, lot occupancy and height) to protect our neighborhoods. In the case at hand, to interpret the provisions any other way would be to carve out a huge exception of the Zoning Regulations' protections and to create an anomaly to the stated intent and purpose of Subtitle D development standards, as if to say, "but for front setbacks, neighborhood character matters, but for front setbacks, nonconformities should not expand their presence or effect elsewhere in the neighborhood".

4. *A permit can only be issued to a property defined by a Lot of Record*

Section A-301.3 is clear in its requirement that a permit can only be issued to a property defined by a Lot of Record. The Project at 4815 Tilden is permitted for Tax Lot 0811 of Square 1503, which is a combination of Record Lots 5 and 6 and parts of 7 and 0801, and therefore the Project's property must be "divided" so that the structure will be on a single Record Lot. Section A-301.3 states: *a building permit shall not be issued for the proposed erection, construction, or conversion of any principal structure, or for any addition to any principal unless the land for the proposed erection, construction, or conversion has been divided so that each structure will be on a separate lot of record.*

Appellants reserve the right to amend, correct, and expand this section and its analysis.

VIII.

Witness List & Planned Testimony

ANC3D Commissioner Tricia Duncan will provide a summary of the ANC3D's concerns regarding front setback creep, the negative impacts associated with the use of nonconforming corner structures in Section D-206.2 calculations, among other things.

Appellant Frank Moore will provide a summary of the neighborhood's concerns regarding the Project and the issues presented in the Appeal, among other things.

Appellants reserve the right to amend this list as needed as information becomes available and as the availability of other potential witnesses or testimony are known once a hearing date is determined.

IX.

Exhibit List

A. Building Permit No. B2603167

- B. Text of March 2026 email correspondence between ANC3D Commissioner Duncan and Deputy Zoning Administrator Vitale
- C. Text of June 2, 2026 email from Spring Valley neighbors to Kevin Kehoe
- D. Copy of Plat of 4801 Tilden Street, NW (Lot 32, Square 1503)

Appellants reserve the right to add to this exhibit list as additional information becomes relevant or available.

X.

Primary Citations

Sections and subsections from Title 11 of the DCRM are cited by subtitle and section or subsection. Policies or provisions of the Comprehensive Plan are cited by section and policy number. This is not intended to be a complete list of citations and appellants reserve the right to amend, correct, or add to.

Section C-101.1 *Subtitle C provides general regulations applicable to all zones unless otherwise stated in this title.*

Section C-201.1 *Except as otherwise permitted in this chapter, nonconforming structures or uses may not be enlarged upon, expanded, or extended, nor may they be used as a basis for adding other structures or uses prohibited elsewhere in the same zone district.*

Section D-101.2(a) *The R zones are intended to: Recognize and reinforce the importance of neighborhood character.*

Section D-206.2 *For all detached residential buildings, a front setback shall be provided within the range of existing front setbacks of all residential buildings on the same side of the street in the block where the building is proposed.*

Section B-100.2, definition of Nonconforming Structure: *A structure lawfully existing at the time this title or any amendment to this title became effective that does not conform to all provisions of this title or such amendment, other than use, parking, loading, and penthouse or rooftop structure requirements. Regulatory standards that create nonconformity of structures include, but are not limited to, height of building, lot area, width of lot, floor area ratio, lot occupancy, setback, court, and residential recreation space requirements.*

Policy LU-2.1.5: Support Low-Density Neighborhoods: *Support and maintain the District's established low-density neighborhoods and related low-density zoning. Carefully manage the development of vacant land and alterations to existing structures to be compatible with the general design character and scale of the existing neighborhood and preserve civic and open space.* (Underlined for emphasis)

Policy LU-2.1.6: Teardowns and Mansionization: *Discourage the replacement of quality homes in good physical condition with new single-family homes that are substantially larger, taller, bulkier or likely to require more energy than the prevailing building stock.*

Policy RCW-1.1.1: Neighborhood Conservation: *Preserve the low-density residential neighborhoods west of Rock Creek Park. Future development in both residential and commercial areas should be carefully managed to address the existing scale, function, and character of these neighborhoods. Updates to zoning regulations offer the opportunity to create more accessory dwelling units for this area to help absorb a share of the District's growth and provide a more proportional portion of affordable and moderate- income housing sensitive to existing neighborhood context.* (Underlined for emphasis)

XI.

Conclusion & Requested Relief

This appeal is filed in response to a Permit issued in error on several counts. Each count stands on its own merits and requires separate consideration. We believe each compels the BZA to grant our requested relief. We have shown that nonconforming houses may not be used to establish Section D-206.2 setbacks. Section A-301.3 is clear in its requirements and must be met.

We therefore request the BZA to direct the BOD to issue a stop work order on the 4823 Project until the Permit and the Project's plans can be made compliant with all provisions of the Zoning Regulations.

To remedy this issue of front setbacks in the future, we further request that the BZA direct the Zoning Administrator to not use or allow to be use nonconforming structures in the calculation of Section D-206.2 setbacks. Clarifying language should be developed as an amendment to Section D-206.2, as a publicly available interpretation or guidance, or both.

Respectfully submitted,

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