

Statement of Appeal

Board of Zoning Adjustment of the District of Columbia

Appellants: Michael Cueter and Madeline Baum

Appellants' Property: 3731 Benton Street NW, Washington, D.C. 20007

Property Subject to Appeal: 3733 Benton Street NW, Washington, D.C. 20007

Square and Lot: Square 1301, Lot 1028

Zone: R-3/GT

Administrative Decision Appealed: Zoning approval and issuance of Building Permit B2506021

Date of Permit Issuance: May 19, 2026

Administrative Agency: D.C. Department of Buildings, Office of the Zoning Administrator

I. Administrative Decision Appealed

Appellants appeal the zoning determination of the D.C. Department of Buildings and its Office of the Zoning Administrator approving and issuing Building Permit B2506021 for substantial alteration, addition, demolition, and reconstruction work at 3733 Benton Street NW.

The permit was issued on May 19, 2026. The permit and its stamped, approved documents constitute the first written administrative decision reflecting DOB's determination that the proposed construction complied with the applicable Zoning Regulations and could proceed as a matter of right in the R-3/GT zone.

The zoning approval should be reversed because the issued permit record contains material and unresolved inconsistencies concerning lot occupancy, the proposed balcony, building dimensions, building height, the building height measuring point, and the extent to which the existing building would remain following demolition. The approved documents do not establish that the project complies with the applicable matter-of-right zoning requirements.

II. Appellants' Standing and Aggrievement

Appellants own and occupy 3731 Benton Street NW, which immediately adjoins the subject property. Their home shares a party-wall condition with 3733 Benton Street NW and is directly affected by the approved construction.

Appellants are aggrieved by the zoning decision because the permit authorizes construction immediately adjacent to their property that may exceed the

maximum permitted lot occupancy, contain inconsistent descriptions of the proposed balcony and building footprint, and contains inconsistent architectural and structural information concerning building height and the proper building height measuring point.

These conditions directly affect the scale, bulk, height, proximity, light, air, privacy, snow-drift exposure, drainage, utility access, and physical relationship of the proposed construction to Appellants' residence. The permit also authorizes work based upon documents that do not accurately or consistently depict material existing conditions at 3731, including the existing porch and gas-meter location.

III. Timeliness

This appeal is timely under Subtitle Y § 302.2.

Appellants did not receive legally sufficient Neighbor Notification of the permit application or notice of DOB's decision approving and issuing Permit B2506021. The Neighbor Notification materials in the permit record were directed to a former owner of 3731 Benton Street NW even though Appellants had acquired the property and their ownership had been recorded before DOB approved Neighbor Notification on January 12, 2026.

The permit was issued on May 19, 2026. Appellants first received actual notice or knowledge of the issued permit on May 30, 2026, when they learned that DOB had approved the project and that work would proceed under Permit B2506021. Before May 30, Appellants had not received the issued permit, the complete approved plans, or notice reasonably sufficient to inform them of the administrative zoning decision now being appealed.

This appeal is being filed no later than July 29, 2026, within 60 days after Appellants first received actual notice or knowledge of the decision. The construction implicated by this appeal is not presently under roof within the meaning of Subtitle Y § 302.3.

IV. Issues on Appeal

Issue 1: The approved project exceeds, or the approved record fails to demonstrate compliance with, the maximum permitted lot occupancy

The subject property is located in the R-3/GT zone and is subject to a maximum matter-of-right lot occupancy of 60%.

The official property information identifies the lot as approximately 18 feet wide with a total lot area of approximately 1,506 square feet. Nevertheless, the applicant's zoning calculation used a building width of approximately 17 feet 9½ inches even though the existing and proposed plats identify an 18-foot lot width and the construction is depicted as extending from lot line to lot line.

Using the documented 18-foot width and 1,506-square-foot lot area, the proposed base building footprint appears to result in approximately 60.46% lot occupancy, exceeding the 60% matter-of-right limitation even without including the additional balcony depicted on the approved plat.

More significantly, the proposed plat bearing DOB's issued approval stamp depicts a proposed balcony extending beyond the principal rear building footprint. When the balcony shown on the issued, stamped plat is included, the approved configuration appears to produce lot occupancy of approximately 69% or greater.

The permit record therefore presents at least three materially different configurations:

1. The applicant's calculation using an approximately 17-foot-9½-inch building width and reporting lot occupancy below 60%;
2. The proposed lot-line-to-lot-line building using the documented 18-foot width, which appears to produce approximately 60.46% lot occupancy without the balcony; and
3. The configuration shown on the issued, stamped proposed plat, including the proposed balcony, which appears to produce approximately 69% or greater lot occupancy.

The stamped proposed plat is the official document upon which the Office of the Zoning Administrator ordinarily bases its zoning approval. During the July 28, 2026 DOB meeting, DOB zoning officials confirmed that the proposed plat is the official document reviewed and stamped for zoning purposes.

Although other sheets or applicant responses may state that rear decks or balconies were removed from the project, the balcony remains depicted on the issued, stamped proposed plat. The removal of the balcony from comments, narratives, or unstamped drawings does not resolve its continued inclusion on the approved plat.

DOB therefore approved a permit record that either:

- Expressly authorizes a balcony producing approximately 69% or greater lot occupancy;
- Authorizes a base building footprint that itself appears to exceed 60% lot occupancy; or
- Contains irreconcilable documents from which the permitted lot occupancy cannot be determined.

No BZA approval authorizing the additional lot occupancy has been identified. No written zoning flexibility determination supporting the approved lot occupancy has been provided.

DOB consequently erred in approving Permit B2506021 as zoning-compliant and matter-of-right without requiring an accurate, internally consistent lot-occupancy calculation and a corrected proposed plat demonstrating compliance with the applicable 60% limitation.

Issue 2: The issued plat and other approved documents inconsistently describe whether a balcony is authorized

The proposed plat bearing DOB's approval stamp depicts a proposed rear balcony. Other documents in the permit record state "GROUND LEVEL PATIO – NO REAR DECKS" or otherwise suggest that the balcony was removed in response to zoning comments.

The issued permit does not identify which configuration controls. DOB's approval stamp remains on a proposed plat depicting the balcony, and the applicant has not submitted a superseding stamped plat clearly removing it from the approved work.

These inconsistencies are material because the balcony affects lot occupancy, building area, the project's relationship to the rear yard, and the overall bulk of the approved construction. DOB could not properly determine zoning compliance while simultaneously approving documents depicting materially different scopes of work.

The BZA should find that DOB erred by issuing a permit without a single, coordinated set of zoning documents consistently identifying whether the balcony was approved.

Issue 3: The architectural and structural documents contain inconsistent building-height information

Appellants do not presently allege merely that DOB selected an “incorrect” numerical building height. The issue is that the issued architectural and structural documents contain materially inconsistent information concerning:

- Existing grade;
- The building height measuring point;
- The vertical relationship between grade and the first-floor elevation;
- The proposed roof elevation;
- The proposed parapet elevation; and
- The resulting overall building height.

Subtitle B § 308.2 requires the building height measuring point in an R zone to be established at the existing grade at the midpoint of the principal building façade closest to a street lot line.

The architectural drawings appear to use an existing grade or building height measuring point approximately four feet below the first-floor elevation. The structural drawings identify a different grade relationship, reportedly approximately four feet four inches below the first-floor elevation. The adjoining properties' existing grade measurements also indicate that the four-foot-four-inch relationship may more closely reflect actual conditions.

DOB representatives acknowledged during the July 28 meeting that the architectural and structural documents contain inconsistent height information. The Office of the Zoning Administrator further stated that construction following the structural dimensions, rather than the architectural zoning dimensions, could produce a zoning-compliance problem.

The approved permit nevertheless contains both sets of documents without reconciling their respective grades, elevations, and dimensions. Consequently, the issued permit does not provide one consistent, enforceable set of height information demonstrating compliance with the R-3/GT height limitation and the measurement requirements of Subtitle B § 308.

The issue on appeal is therefore the inconsistency within the approved record and DOB's approval of the permit without requiring coordinated architectural

and structural documents—not a conclusory allegation that one particular DOB height figure is necessarily incorrect.

Issue 4: DOB did not adequately determine whether the extent of demolition affected the project's zoning status or its ability to retain any existing nonconforming conditions

The approved demolition drawings and observed field conditions indicate the removal of the front and rear exterior walls, roof, floors, interior framing, porch, and substantially all building components other than the party walls and portions of the foundation.

DOB's Zoning Administrator Interpretation ZA-010 distinguishes partial demolition from the complete removal or zoning raze of a building. When the building footprint is not expanded, at least four feet in height of the enclosing perimeter walls must generally remain to avoid classification as a complete removal for zoning purposes. When the footprint is expanded and some perimeter walls are completely removed, OZA examines the percentage of existing enclosing exterior wall area retained; generally, approximately 40% to 50% must remain where an owner seeks to preserve existing nonconforming conditions.

The permit record does not identify:

- The percentage of the existing enclosing exterior wall area that would remain;
- Whether at least four feet of the required enclosing perimeter walls would remain;
- Whether the existing structure possessed nonconforming lot occupancy or other conditions;
- Whether the applicant sought to retain any existing nonconforming condition; or
- Whether the proposed work must instead be evaluated as new construction fully complying with current matter-of-right standards.

This question is directly material to the lot-occupancy determination. If the existing building possessed a nonconforming condition and the applicant sought to retain it, the extensive removal of the existing walls may have eliminated any right to preserve that condition.

DOB erred by approving the project without documenting the required zoning determination concerning the extent of demolition, the existing conditions being retained, and the effect of that demolition on any claimed zoning nonconformity.

Issue 5: The approved zoning documents omit or inconsistently depict material adjoining and existing conditions

The approved documents do not consistently depict the existing porch, gas meter, and related structure at 3731 Benton Street NW. They describe portions of the proposed porch work as replacement in kind while depicting or permitting construction extending farther toward, or fully to, the lot line.

Although building-code and utility-safety enforcement questions are not independently presented as grounds for this zoning appeal, these omissions are relevant evidence that the approved zoning documents did not accurately depict the existing and proposed building footprints or their relationship to adjoining conditions.

The omissions further undermine the reliability of the lot-occupancy calculation and DOB's determination that the proposed work constituted a compliant matter-of-right alteration.

Issue 6: DOB approved materially inconsistent zoning documents without requiring BZA relief

The Zoning Administrator may approve only work that complies with the matter-of-right requirements of the Zoning Regulations or is supported by previously granted zoning relief.

Permit B2506021 contains material inconsistencies concerning:

- Whether the proposed building is 17 feet 9½ inches or 18 feet wide;
- Whether the construction extends lot line to lot line;
- Whether a rear balcony is included;
- Whether the project has approximately 59.73%, 60.46%, or 69% or greater lot occupancy;
- The existing grade and building height measuring point;
- The architectural and structural height dimensions; and

- The extent of existing construction that would remain.

These are not insignificant drafting differences. They determine whether the project complies with the applicable matter-of-right lot-occupancy and height limitations.

DOB acknowledged during the July 28 meeting that the approved plat and plan sheets may not correlate and that it is DOB's responsibility to ensure that the approved plat, plans, and related documents align.

Because the issued record does not contain one consistent configuration establishing zoning compliance, DOB erred by approving and issuing Permit B2506021 without requiring corrected documents and, where required, relief from the Board of Zoning Adjustment.

V. Requested Relief

Appellants respectfully request that the Board:

1. Sustain this appeal;
2. Reverse the zoning determination reflected in the approval and issuance of Permit B2506021;
3. Determine that the issued permit documents do not establish compliance with the applicable matter-of-right lot-occupancy and building-height requirements;
4. Determine that the balcony depicted on the stamped proposed plat is part of the issued zoning approval unless and until removed through a properly reviewed and approved superseding plat;
5. Remand the permit to DOB and the Office of the Zoning Administrator with instructions to require a single, coordinated set of architectural, structural, and zoning documents;
6. Require an accurate lot-occupancy calculation using the official lot dimensions and every building element required to be included under the Zoning Regulations;
7. Require a consistent building height measuring point and coordinated architectural and structural height information;

8. Require a determination of the zoning consequences of the extensive demolition and the retention or loss of any existing nonconforming condition;
9. Require the property owner to obtain any necessary BZA relief before DOB reissues or reinstates zoning approval; and
10. Grant such other relief as the Board determines appropriate.