BEFORE THE BOARD OF ZONING ADJUSTMENT
OF THE DISTRICT OF COLUMBIA

Appeal by B Monroe Ventures LLC of Zoning Administrator Determination

ANC 1D

STATEMENT OF MURPHY-KELLER INTERVENORS
IN OPPOSITION TO APPEAL

This Statement is submitted on behalf of Keenan R. Keller and Donna M. Murphy, owners of 1850 Monroe Street, NW, (Adjacent Property Owners) to the Board of Zoning Adjustment (Board) in support of a decision of the Zoning Administrator on July 28, 2017, and in opposition to the Statement of Appeal submitted by Appellant. We were granted Intervenor party status in this matter by Order of the Board dated May 2, 2018, and filed in this case (#19613) as Exhibit 53.

We have a direct interest in this matter as our house at 1850 Monroe Street, NW is located immediately adjacent to the property at 1842-44 Monroe Street, NW. As residents since 1995, we are fully committed to preserving the historic character and usage of the homes on the 1800 block of Monroe Street, and to ensuring that the interests of existing homeowners and residents are fully considered in the zoning and application processes.

The Appellant is proposing to construct two (2) twenty-five-foot-wide flats at 1842 Monroe and 1844 Monroe Street, N.W., which have some styling that resembles rowhouses on their Monroe Street frontage, but which from the sides and alley have the appearance of a 50 foot wide three-story apartment building. The Appellant proposes to build this structure right up to our property line, which would result in a 30 foot brick wall towering over our side yard.

For the reasons set forth below, Appellant's Statement of Appeal does not support overturning the legally sound and factually appropriate determination of the Zoning Administrator.

I. Jurisdiction and Standing

Intervenors agree that the Board has jurisdiction over this appeal and that Appellant has standing to appeal. Intervenors' standing has been affirmed by the Board in granting our party status in its May 2 Order.

II. Description of the Property and Project

Intervenors agree that the lot at 1844 Monroe Street, NW, (Square 2614, Lot 38) and the adjoining lot at 1842 Monroe Street, NW (Lot 39) are currently vacant. These lots previously held a late Victorian duplex of two semi-detached single family homes with side yards on both sides.

Intervenors have been the owners and occupants for 22 years of the directly adjoining property at 1850 Monroe Street, NW. Contrary to the representation in Appellant' Statement, our home is not a semi-detached house, but a fully detached single family home. Along with the detached homes on the other side of the alley between Monroe Street and Park Road, our home is a mainstay of the Mount Pleasant Historic District and is on the National Register of Historic Places. It is one of six houses built as detached single family homes, along with about a dozen 2½ story row houses, in the stretch of Monroe Street on the South side of the street between 18th Street and the intersection of the alley between Monroe Street and Park Road.

As Appellant acknowledges, he "signed the contract to purchase these lots in January, 2015, and purchased them in April, 2015." Contrary to Appellant's representation, the fact that it is now more than 2 ½ years later and Appellant has not received final approvals or

permits for buildings on these lots is due primarily to a failure to engage and discuss the proposed development with the ANC, with Historic Mount Pleasant, with ourselves or the other adjoining property owner, or with any of the neighbors who are strongly invested in having high-quality, historically appropriate and legally compliant housing built on the 1842 and 1844 Monroe Street lots.

III. Burden of Proof and Zoning Administrator Decision

A. Burden of Proof

DCMR Section 11-X1101.2 states: "The appellant shall have the burden of proof to justify the granting of the appeal. If no evidence is presented in opposition to the case, the appellant shall not be relieved of this responsibility." Therefore, in this case, the Appellant has the burden of demonstrating that the Zoning Administrator's decision was incorrectly decided.

B. Zoning Administrator's Decision

Subtitle E § 307.1 of the zoning code states, "When a new dwelling or flat is erected that does not share a common division wall with an existing building or a building being constructed together with the new building, it shall have a side yard on each resulting free-standing side." The Zoning Administrator properly determined that the proposed building on 1844 Monroe Street, N.W. will not share a common division wall with the building (our home) on the adjacent lot at 1850 Monroe Street. As such, the proposed building at 1844 Monroe Street will have a resulting free-standing side that must have a side yard.

IV. The Zoning Administrator's Decision Is Correct

Appellant asserts that when the language of a regulation is unambiguous and does not produce an absurd result, the Board does not look beyond the plain meaning of that regulation.

In this case, the plain meaning of DCMR § 307.1 is that a new dwelling that will not share a common division wall with an existing (or another new) building must have a side yard on that free-standing side. Appellant argues that because the zoning code uses the singular version of "a common division wall" and "an existing building" it should be interpreted to mean that no new building that will share one common division wall with any other building would ever need to have a side yard. However, that interpretation ignores the plain language of the code stating that such new buildings "shall have a side yard on *each* resulting free standing side" (emphasis added). Appellant's reading would render this phrase of the regulation meaningless and irrelevant because under Appellant's interpretation only a fully detached building – one that would share no common division wall with any other building -- would ever be required to have a side yard.

Appellant thus argues that because the new building at 1844 will share a common division wall on one side with the new building at 1842, it need not have a side yard on the resulting free standing side adjacent to our property at 1850 Monroe. This is contrary to the plain meaning of the language of Section 307.1 requiring a side yard on *each* free standing side, which instead mandates the interpretation given to it by the Zoning Administrator.

Even if the Board were to view Appellant's interpretation of the language of Section 307.1 as a potentially plausible reading of that Section, this would then lead to the conclusion that there are two possible interpretations of the language of Section 307, and that this section of the code is, in fact, ambiguous.[1] In that case, the Appellant would bear the burden of proof to

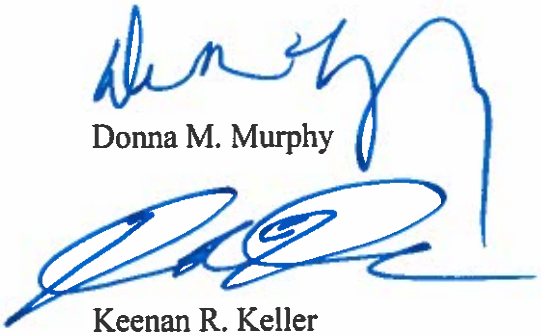
[1] In passing, Appellant asserts that the Zoning Administrator's interpretation of the zoning code is different than the interpretation that existed of the prior code at the time the property was purchased in

justify granting the appeal under Section 11-X1101.2. Yet Appellant has presented no evidence or legal reason as to why the Zoning Administrator's reasonable interpretation should be overturned. Appellant thus has failed to justify granting the appeal, and has not met their burden of proof in this proceeding.

V. Conclusion

For all these reasons, the appeal should be denied and the Zoning Administrator's ruling that a side yard is required for the building at 1844 Monroe Street should be upheld.

Respectfully submitted,



Donna M. Murphy

Keenan R. Keller

April 2015. However, the Zoning Code was changed substantially in 2016, and Appellants have presented no support for any argument that the prior interpretation should apply.