BEFORE THE DISTRICT OF COLUMBIA ZONING BOARD OF ADJUSTMENT

Appeal of Hilary Dove and Ranieri Cavaceppi	)	BZA Appeal No. 19777

REPLY IN SUPPORT OF APPEAL OF HILARY DOVE AND RANIERI CAVACEPPI

The Pre-Hearing Statement of the District of Columbia Department of Consumer and Regulatory Affairs ("DCRA Statement") fails to address two of the four grounds that appellants contend strongly support their position that the Zoning Administrator erred in permitting the Property Owner Emma Chanlett-Avery ("Property Owner") to place three air-conditioning units in the side yard of her property located at 4400 Albemarle Street, N.W.

First, Appellants demonstrated that in his April 6, 2018 decision, the Zoning Administrator incorrectly found that as long as the units were less than four feet in height, the setback rules did not apply, and the units could be placed in any open yard. To reach his decision, the Zoning Administrator apparently relied on D.C.M.R. Title 11, Subtitle B, Chapter 3, § 324.1(a), which contains the four-foot exemption. However, and as the DCRA Statement apparently concedes at page 3, § 324.1(a) only applies to "structures."

> The Zoning Administrator's position is that after a mechanical structure is affixed to the grounds it becomes a structure that is subject to 11-B DCMR §324.1. Since the subject air-conditioning units are structures less than four feet above grade, the air-conditioning units may occupy the side yard of [the property].

DCRA Statement at 3.

What the DCRA Statement fails to address is that the definition of the term "structure" which appears in § 324.1 is defined in D.C.M.R. Title 11, Chapter 1, § 199.1 to specifically exclude "mechanical equipment." The full definition of the term "structure" is as follows:

> Structure - anything constructed, including a building, the use of which requires permanent location on the ground, or anything attached to something having a permanent location on the ground and including, among other things, radio or television towers, reviewing stands, platforms, flag poles, tanks, bins, gas holders, chimneys, bridges, and retaining walls. *The term structure shall not include mechanical equipment*, but shall include the supports for mechanical equipment. Any combination of commercial occupancies separated in their entirety, erected, or maintained in a single ownership shall be considered as one (1) structure. (emphasis added).

Large air conditioning compressor units are "mechanical equipment" (see 20 D.C.M.R. §2801.2)[1] and they are not "structures" for purposes of the 4-foot exemption from the setback requirements. The Zoning Administrator's reliance on the four-foot exemption in § 324.1(a) is simply wrong. Without that four-foot exemption, the setback rules apply and those units must be moved. See DCRA Statement at 3 ("[E]very part of a [side] yard shall be open and unobstructed to the sky from the ground up except for a 'structure'").

Second, the DCRA Statement contains no argument rebutting Appellants' contention that the noise generated from the three units exceeds the 60db maximum permissible limit set by the District of Columbia Noise Control Act. See 20 D.C.M.R. §2701.1. Since early May 2018, Ms. Dove and Mr. Cavaceppi have made repeated requests to DCRA to conduct a noise inspection at the property line for the three units. Despite making these requests, the latest of which occurred on November 8, 2018, DCRA has taken only one noise test, which apparently was negated by the wind, and has taken no other readings. Copies of email and text correspondence between DCRA and Ms. Dove and Mr. Cavaceppi regarding the lack of a noise inspection despite repeated requests are attached as Exhibit 11.

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[1] Section 2801.2 states in part that "[n]oise resulting from the use or operation of any air-conditioning, refrigerator, heat pump, fan, swimming pool equipment or other mechanical equipment . . . shall be prohibited in excess of sixty (60) db . . . ."

In an effort to demonstrate to DCRA the need for a noise inspection at the property line, Ms. Dove and Mr. Cavaceppi have stood at the property line and used decibel measuring devices on a number of occasions during this time period. Each time, the decibel levels have reached between 68-72.3db, well in excess of the 60db limit. See Ex. 11. The Appellants have sent these results to the DCRA to no avail. Id. Nevertheless, the measurements taken by the Appellants demonstrate that the noise generated by those units exceeds the 60db limit, and for that reason, the units need to be moved.

The October 25, 2018 submission by the Property Owner does not address any of these regulatory and legal issues. Ms. Dove and Mr. Cavaceppi never were apprised of the change in plans to move the units from the rear yard to the side yard, nor were the revised architectural plans ever shared with them. When they learned of the change, they raised objections in February 2018 and then filed this appeal in April 2018, well before the units were moved in May 2018. The Property Owner claims it will cost "thousands of dollars" to move the units back to their original location, but offers no proof in that regard, gives no reasons for the change in plans, and could have avoided any additional cost by waiting until the appeals process was complete before moving the units. Similarly, the Property Owner claims that other units in the neighborhood are located in side yards, but fails to provide any proof that any of these other units sit right on the property lines in violation of the set-back rules that Ms. Dove and Mr. Cavaceppi are seeking to uphold with this appeal. Finally, the Property Owner does not address the noise violations at all.

In sum, Ms. Dove and Mr. Cavaceppi, Appellants herein, respectfully submit that the Zoning Board of Adjustment should grant their appeal, reverse the Zoning Administrator's decision, find that placement of the air conditioning units violates the District of Columbia's

zoning rules and regulations, issue a stop work order for the relocation of the units to the side yard, and require placement of the units in the rear yard of the property located at 4400 Albemarle Street, N.W., per the original building permit and architectural drawings that DCRA approved in September 2017.

Dated: November 9, 2018

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of November, 2018, I served a copy of the foregoing by electronic mail on the following:

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