

BOARD OF ZONING ADJUSTMENT FOR THE DISTRICT OF COLUMBIA

Case No. 19818

Appellant's Response to DCRA's Pre-Hearing Statement

The Appellant, Stephen Cobb, submits this response to DCRA's Pre-Hearing Statement (Exhibit 33).

1. The 2016 Zoning Regulations Prohibit the Removal of the Parapet Wall

DCRA argues that 11-E DCMR § 206.1 does not prohibit removal of parapet walls because § 206.1 lists only certain roof top architectural elements, and parapet walls are not among them. But the list of elements in § 206.1 is illustrative, not exhaustive. The relevant language states, "A roof top architectural element original to the building *such as* cornices, porch roofs, a turret, tower, or dormers, shall not be removed or significantly altered." 11-E DCMR § 206.1(a) (emphasis added). Use of the term "such as" indicates that the items listed in § 206.1 are examples of items that qualify as roof elements, not the only items that qualify. *See, e.g., Bragdon v. Abbott*, 524 U.S. 624, 639 (1998) ("As the use of the term 'such as' confirms, the list is illustrative, not exhaustive."). Section 206.1 thus unambiguously applies to all roof top architectural elements, including parapet walls.

Any remaining doubt is resolved by the Zoning Regulations' rules of interpretation:

"In their interpretation and application, the [Zoning Regulations] shall be held to the minimum requirements adopted for the promotion of the public health, safety, morals, convenience, order, prosperity, and general welfare to:

- (a) Provide adequate light and air;
- (b) Prevent undue concentration of population and the overcrowding of land; and
- (c) Provide distribution of population, business and industry, and use of land that will tend to create conditions favorable to transportation, protection of property, civic activity, and recreational, educational, and cultural opportunities; and that will tend to further economy and efficiency in the supply of public services."

11-A DCMR § 101.1. The addition of a third-story popup will provide less light and air, and will increase concentration of population and crowding of land. As a result, Section 206.1 must be interpreted in light of 11-A DCMR § 101.1, so that parapet walls are considered roof top architectural elements are may not be removed without special permission. Section 206.1, then, must be interpreted to apply to parapet walls.

2. The Roof Design Triggers the Penthouse Requirements

DCRA next contends that the roof design does not trigger the penthouse requirements because the roofdeck will be the roof itself, not a separate structure on top of the roof. But despite the hybrid roof-roofdeck nature of the roof design, it still provides for a roof deck. A *penthouse* is a

“structure on or above the roof of any part of the building.” 11-B DCMR § 1001.2. A *structure*, meanwhile, is “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.” *Id.* And the roof design is not merely the “floor”—it is also the parapet walls forming a barrier around the floor, which give the appearance of the house being one unified structure (*see* Exhibits 7–9 to Original Pre-Hearing Statement). Importantly, these exterior parapet walls, or “curtain walls,” must be counted when considering whether the roof design constitutes a roof deck: “Areas within curtain walls without a roof used where needed to give the appearance of one (1) structure . . . shall be computed as a roof structure to determine if they comply with Subtitle C § 1503.2.” 11-C DCMR § 1503.3. Subtitle C § 1503.2, in turn, states that penthouses may not exceed 1/3 of the total roof area in zones where there is a three-story limitation, such as with 1267 Penn St. Thus, under § 1503.3, the roof area within the parapet walls must be (1) considered a “roof structure,” triggering the penthouse requirements, and (2) computed as a roof structure to determine if the roof area complies with the roof-area requirement. As the Appellant argued in his original Pre-Hearing Statement (Exhibit 2), the roof area at issue here does not comply with the 1/3 roof-area maximum. And because the area within the parapet walls is considered a roof structure, it is a penthouse, triggering the setback requirements. The roof design, then, triggers the penthouse requirements, violating both the size and setback requirements.

3. The Third Story and Roofdeck Do Not Comply with the Zoning Regulations

The Appellant agrees with DCRA that, in general, properties such as 1267 Penn St would be allowed by right to have a third-story and roofdeck such as those involved here. But this is a unique situation, given the layout of 1267 Penn St and its relation to the surrounding properties, as discussed in the Appellant’s Original and Supplemental Pre-Hearing Statements. The Zoning Regulations must be interpreted and applied to provide adequate light and air and prevent undue concentration of population and the overcrowding of land. 11-A DCMR § 101.1(a)–(b). And the RF Zoning Regulations are intended to recognize and reinforce neighborhood character and improvements to the overall environment. 11-E DCMR § 100.3(a). So in addition to the other zoning violations that the Appellant has asserted, under the unique, narrow circumstances of this case, the the Board should also deny the Appellee the ability to build the third story and roofdeck under 11-A DCMR § 101.1(a)–(b) and 11-E DCMR § 100.3(a).