



**DISTRICT OF COLUMBIA GOVERNMENT  
ADVISORY NEIGHBORHOOD COMMISSION (ANC) 5D**

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November 21, 2018

Mr. Frederick L. Hill  
Chairperson  
Board of Zoning Adjustment  
441 4<sup>th</sup> Street, N.W. Suite 210S  
Washington, D.C. 20001

Dear Chairperson Hill and Honorable Members of the Board,

ANC 5D resolves to **SUPPORT** the appeal of Stephen Cobb, Case No. 19818, pursuant to 11 DCMR § Y-503. This appeal requests the vacating of Permit B1804093, under which developer 1267 PENN ST NE LLC would convert a single-family dwelling to a two-family dwelling at 1267 Penn St NE.

The existing building is a semi-detached two-story single-family home with a cellar. 1267 PENN ST NE LLC proposes demolishing all but the front facade and rebuilding the cellar, first floor, and second floor, and adding a third floor and roof deck penthouse above the third floor.

This appeal was considered at a public meeting of ANC 5D on October 9, 2018. Proper notice of this meeting was given by posting notices on the Ward 5 Listserv, the ANC 5D website [www.anc5d.org](http://www.anc5d.org), and the Nextdoor neighborhood social network. In addition, the appeal was considered at a preceding Trinidad Joint Single Member District (SMD) meeting on September 15, 2018. The Trinidad Joint SMD meetings encompass the 5D02, 5D06, and 5D07 Single-Member Districts, represented by ANC Commissioners Keisha L. Shropshire (5D02), H. Yvonne Buggs (5D06), and Clarence Lee (5D07 & ANC 5D Chairperson).

At the Trinidad Joint SMD Meeting, neighbors voiced concern with the project. Neighbors also expressed concern with the developer, who has had at least one property collapse during construction and is currently being sued for building homes with features that are not code compliant or are otherwise subpar. Upon conclusion of the Appellant's presentation, the ANC commissioners notified the Appellant that the full ANC would likely support his appeal.

ANC 5D has seven Single Member Districts. A quorum of four ANC commissioners is required for action. At the October 9, 2018, ANC 5D meeting, four ANC commissioners were present. At

this ANC meeting, the Appellant presented his appeal. After a question and answer period, the ANC voted unanimously 4-0-0 in favor of a motion to support the Appellant's appeal.

ANC 5D SUPPORTS the appeal in Case No. 19818 for two reasons: the community's opposition to the project; and the fact that the rear addition, side addition, third floor, and penthouse require special exceptions or variances—yet the developer made no effort to apprise ANC 5D about the project. *See* 11 DCMR § Y-300.8(l) (requiring that applications for special exceptions and variances include a “statement of the efforts that have been made to apprise the affected ANC,” among others); *id.* § Y-300.11(b) (requiring that applications for special exceptions and variances be served on the affected ANC). And even if the developer had apprised ANC 5D, the ANC would have voted against the project because of community opposition.

### **1. The Third Floor Would Require Removal of the Parapets**

Without a special exception, roof top architectural elements, such as parapets, may not be removed. 11 DCMR § E-206.1(a), 206.2. The third floor at 1267 Penn St, however, would require removal of the parapets, and 1267 PENN ST NE LLC has made no attempt to seek a special exception.

### **2. The Penthouse Is Too Large and Lacks the Required Setbacks**

1267 Penn St is zoned RF-1, which allows for structures up to 3 stories. *See* 11 DCMR § 303.1. For zones with a limitation of 3 stories, penthouses may not exceed 1/3 of the total roof area. 11 DCMR § C-1503.2(a); *see also id.* § E-202.1 (stating that penthouses in RF-zoned properties are subject to Subtitle C, Chapter 15). The penthouse at 1267 Penn St thus may not exceed 1/3 of the total roof area. Yet the proposed penthouse would cover the entire roof area.

The penthouse also lacks the required setbacks. All penthouses must have a one-to-one setback from the front, rear, and side walls. 11 DCMR § C-1502.1(a)–(c). The penthouse here, however, has no setbacks.

These requires may be waived with a special exception, but none has been sought. *See* 11 DCMR § C-1504.1. The penthouse is therefore too large and lacks the required setbacks.

### **3. The Rear Extension Is Beyond the 20' Minimum and Is Not Grandfathered In**

RF-1 properties must have a rear yard of at least 20 feet. 11 DCMR § E-306.1. The drawings submitted to DCRA with the application indicate that the rear yard will be 20 feet. But the rear wall has actually been built several feet beyond the 20-foot limit.

For buildings built on or before May 12, 1958, rear-yard extensions may exist. 11 DCMR § E-205.3. But the extension must be limited to the portion of the “building area” that projected into the rear yard on May 12, 1958. *Id.*; *see also id.* § 100.2 (defining *building area* as the “maximum horizontal projected area of a principal building and its accessory buildings”). 1267 PENN ST NE LLC is building over the prior footprint, which included a side and rear extension for an enclosed porch. This porch, however, did not exist even by 1959 (Exhibit 1). The rear yard is thus limited to that portion of the footprint that does not include the porch. As a result, the rear yard does not meet the 20' minimum.



#### 4. The Side Extension Is Beyond the 5' Minimum

While side yards are not required for RF-1 properties, any side yard provided on a principal building must be at least 5 feet wide. 11 DCMR § E-307.3. 1267 Penn St, though, would have a side extension toward the rear that is against the property line, 5' too large. This too is due to 1267 PENN ST NE LLC including the enclosed porch in its footprint.

To be sure, nonconforming side yards may exist if they existed before the adoption of the 2016 Zoning Regulations. 11 DCMR § E-307.4. But still, the side yard must be at least 2 feet wide. *Id.* Here, the portion of the side-yard once occupied by the enclosed porch is less than 2 feet wide. The side yard is thus too narrow.

If you have any questions or need further information, please contact me at [5D07@anc.dc.gov](mailto:5D07@anc.dc.gov).

Sincerely,



Clarence Lee  
Chair, ANC 5D