

**Response to “Property Owner’s Response to Appellant’s and Intervenors’  
Submissions”  
Shelby and Adam Telle, Intervenors  
BZA Case 19818**

***The nonconforming structure was initially destroyed.***

11-C DCMR § 201.2 holds that a nonconforming structure existing at the time of the zoning laws “may be continued, operated, occupied, or maintained.” In the situation at hand, however, the entire nonconforming structure has been destroyed in a raze using the standard adopted by the Zoning Administrator.

DCRA’s Response to Intervenor’s Statement outlines the standard the Office of the Zoning Administrator has laid out for what constitutes a raze. The Intervenors assert that in applying that standard, it is apparent that the non-conforming structure at 1267 Penn Street NE has been razed. Using DCRA’s standard that a raze occurs when less than “40% of the pre-existing wall surface area” remains,<sup>1</sup> the non-conforming structure has been razed because 100% of it’s pre-existing walls have been torn down. As Architectural Plan A0100, Part 2: Existing Site Plan demonstrates, the non-conforming structure off the original home was in-fact a separate structure as demonstrated by the dividing wall between it and the main home. (See Attachment A). As such, the entire non-conforming structure has been razed because every wall has been removed.

11-C DCMR § 203 goes to lengths discussing when a nonconforming structure may or may not be rebuilt when destroyed by fire, collapse, explosion, or act of God. Rebuilding is not guaranteed for these actions. Purposeful destruction of a non-conforming structure should be read as being excluded from being rebuilt in ways that would violate existing zoning laws.

***The nonconforming structure was subsequently expanded.***

The Property Owner claims that the nonconforming structure has not been expanded. DCRA seems to assess expansion of a non-conforming structure like this one, based on whether or not the “footprint, gross floor area, nor mass of the non-conforming structure, encroaching into the side yard, are expanded.”<sup>2</sup> Mass is a measure of the amount of matter something contains. The prior non-conforming structure sat on wooden stilts, was unenclosed, and could be walked under from front yard to backyard. The proposed construction plans expand the nonconforming structure downward, enclosing space that was previously yard beneath the non-conforming

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<sup>1</sup> BZA Case 19818, “D.C. Department of Consumer and Regulatory Affairs’ Response to Intervenor’s Statement” at page 3.

<sup>2</sup> BZA Case 19818, “D.C. Department of Consumer and Regulatory Affairs’ Response to Intervenor’s Statement” at page 3.

structure. As such, the mass of the non-conforming structure is double the original mass, constituting an enlargement of a non-conforming structure.

**Conclusion**

The Intervenors join the Appellant in requesting that the Board reverse the issuance of Permit B1804093 in full. The Intervenors request that any construction at 1267 Penn Street N.E. fully comply with the requirement for 5-feet of side yard.

**Certificate of Service**

I certify that on December 16, 2018, I served Intervenor's Response to "Property Owner's Response to Appellant's and Intervenors' Submissions" and related exhibits via electronic mail to:

DCRA  
Office of Zoning  
441 4<sup>th</sup> Street N.W., Suite 220-S  
Washington, D.C. 20001  
Service via: [bzsubmissions@dc.gov](mailto:bzsubmissions@dc.gov)

Adrienne Lord-Sorensen  
D.C. Department of Consumer and Regulatory Affairs  
1100 4<sup>th</sup> Street SW  
Washington, DC 20024  
Service via: [Adrienne.lord-sorensen@dc.gov](mailto:Adrienne.lord-sorensen@dc.gov)

1267 Penn Street NE LLC  
8855 Annapolis Road  
Suite 205  
Lanham, MD 20706  
Service via: [reginaldrileyjr@gmail.com](mailto:reginaldrileyjr@gmail.com)

Martin Sullivan  
Sullivan & Barros, LP  
1155 15<sup>th</sup> Street, NW, Suite 1003  
Service via: [msullivan@sullivanbarros.com](mailto:msullivan@sullivanbarros.com)

Stephen Cobb  
1269 Penn Street N.E.  
Washington, D.C. 20002  
Service via: [sacobbva@gmail.com](mailto:sacobbva@gmail.com)

Clarence Lee  
Chairperson  
ANC 5D  
Service via email: [5D@anc.dc.gov](mailto:5D@anc.dc.gov) and [5D07@anc.dc.gov](mailto:5D07@anc.dc.gov)

/s/ Shelby Telle  
Shelby Telle  
Intervenor  
BZA Case 19818  
(727)656-0401  
shelbytelle@gmail.com

Attachment A- Architectural Plan A0100, Part 2: Existing Site Plan

