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,¹ 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."² 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

¹ BZA Case 19818, "D.C. Department of Consumer and Regulatory Affairs' Response to Intervenor's Statement" at page 3.

² BZA Case 19818, "D.C. Department of Consumer and Regulatory Affairs' Response to Intervenor's Statement" at page 3.

BZA Case 19818 Statement from Intervenors

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.

BZA Case 19818 Statement from Intervenors

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 4th Street N.W., Suite 220-S Washington, D.C. 20001 Service via: bzasubmissions@dc.gov

Adrianne Lord-Sorensen D.C. Department of Consumer and Regulatory Affairs 1100 4th Street SW Washington, DC 20024 Service via: <u>Adrianne.lord-sorensen@dc.gov</u>

1267 Penn Street NE LLC 8855 Annapolis Road Suite 205 Lanham, MD 20706 Service via: <u>reginaldrileyjr@gmail.com</u>

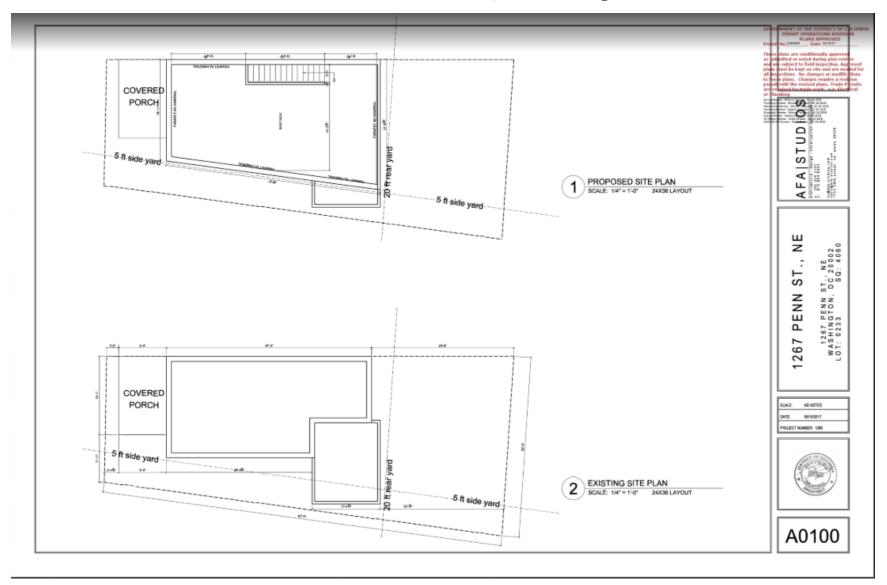
Martin Sullivan Sullivan & Barros, LP 1155 15th Street, NW, Suite 1003 Service via: <u>msullivan@sullivanbarros.com</u>

Stephen Cobb 1269 Penn Street N.E. Washington, D.C. 20002 Service via: <u>sacobbva@gmail.com</u>

Clarence Lee Chairperson ANC 5D Service via email: <u>5D@anc.dc.gov</u> and <u>5D07@anc.dc.gov</u>

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

BZA Case 19818 Statement from Intervenors



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