

February 8, 2016

City of Cincinnati Zoning Board of Appeals
805 Central Parkway, Suite 500
Cincinnati, Ohio 45202

Re: 1332 Republic Street, Cincinnati, Ohio 45202, particularly identified as Hamilton County Auditor Parcel No. 081-0004-0177-00 (the “Property”)

Honorable Members of the Zoning Board of Appeals,

As property owners, residents, and neighborhood representatives, we are appealing the Historic Conservation Board’s (“HCB”) approval of a Certificate of Appropriateness for the Property, particularly with regard to the construction of a partial second-story addition and installation of an exterior roof terrace on the Property (the “Application”). On December 21, 2015, the HCB determined that an 875 square foot, open-air rooftop drinking establishment, surrounded 360 degrees by residential buildings, with an occupancy of 70 people and operating hours as late as 2A.M., furthers the conservation and integrity of the OTR Historic District (the “District”).

The HCB’s approval in this case reflects an egregious neglect of its duty under the Municipal Code, City of Cincinnati (the “Code”) to evaluate Certificates of Appropriateness based on the Over-The-Rhine Historic Conservation Guidelines (the “Guidelines”). The HCB blatantly ignored the Guideline provisions applicable to rooftop additions/decks in this case, as well as the Guidelines’ explicit directive to consider the Application’s location and its compatibility with surrounding contributing structures.¹ The HCB unreasonably and arbitrarily reviewed the Application using the same standards it imposes on structures in intense commercial sections of the District to the detriment of the community that calls Republic and 14th Street home.

By its own admission, the HCB made an exception to the Guidelines in order to reach its decision. The Urban Conservator Staff (the “Staff”) and the HCB noted throughout the public hearings that it was treating this Application differently because it involved a non-contributing building. As discussed below, neither the Guidelines nor the Code permit the HCB to unilaterally deviate from the explicit requirements set forth in the Guidelines. Nevertheless, the HCB neglected to address the majority of provisions applicable to the rooftop and ignored overwhelming evidence that the Application failed to substantially comply with the Guidelines.

Finally, throughout the application process the HCB arbitrarily applied the procedural requirements as set out in the Code, the Historic Preservation Guidelines, and the specific requirements it set out for the Applicant.

The HCB’s decision is an abuse of power and a neglect of duties. It must be overruled.

I. SUMMARY OF PROCEDURAL HISTORY:

On behalf of the owner of the Property, David Le, Platte Architecture and Design (the “Applicant”) submitted an Application for a Certificate of Appropriateness on September 14, 2015,

¹ New Construction, Section A, Paragraph 3. Under the Guidelines, Additions should follow new construction guidelines, see Additions, Intent and General Guidelines, paragraph 1.

requesting the approval of the rehabilitation of a single-story garage type structure located on the Property and the construction of a partial second-story addition that transitions into an eight hundred and seventy-five square foot exterior rooftop terrace to be used as a drinking establishment. The HCB held a public hearing on October 26, 2015 (“Hearing 1”), where the HCB defeated the motion to approve the certificate of appropriateness in a tie vote. After the defeat of the motion, the HCB tabled the Application. The Applicant submitted a revised project on December 11, 2015 and the HCB held a second public hearing on December 21, 2015 (“Hearing 2”), where the HCB voted to approve the Application with limitations.

II. SUMMARY OF FACTS:

A. Location and situation of the Property:

1. The Property is located on the southeast corner of the intersection of two one-lane, residential streets², West 14th Street and Republic Street.
2. The structure on the Property, a one-story “garage-type structure”³ with a flat roof, is a noncontributing building used as residential.⁴
3. The Property is the only one-story unit in the immediate vicinity and is surrounded by residential units⁵ ranging from three to four stories in height, and is located within 210 feet of a residential district.⁶
4. The proximity of the Property to the surrounding apartment and condominiums is “extremely close. In some cases balconies on neighboring properties will be looking down on this [proposed] outdoor rooftop bar. . .”⁷

III. ARGUMENTS ON APPEAL

The HCB’s decision to approve the Application in this case was arbitrary, unreasonable, and cannot be upheld on the preponderance of evidence.⁸ As discussed below, the HCB overlooked the express requirements set forth by the Guidelines, applied the wrong standards to the facts, and relied on evidence that fell far from demonstrating that the proposed rooftop substantially conforms to the Guidelines in reaching its decision. Further, throughout the application process the HCB arbitrarily applied the procedural requirements that govern the HCB proceedings.

A. The HCB Failed to Apply the Specific Guidelines Applicable to the Proposal.

The primary function of the HCB in ruling on a Certificate of Appropriateness application is to determine whether, based on credible evidence, the proposal substantially conforms to the Guidelines.⁹ *The Guidelines explicitly state that the rehabilitation of and additions to non-contributing buildings*

² See CAGIS (<http://cagisonline.hamilton-co.org/cagisonline/index.html>).

³ Decision of Historic Conservation Board, City of Cincinnati, Item 5, Findings of Fact (December 21, 2015).

⁴ HCB Materials, Item 8, Background, p 274 (December 21, 2015).

⁵ One of the adjacent buildings is in the process of being built into a residential unit.

⁶ See Trans. 2, p. 4.

⁷ HCB Materials, Item 8, Background, p 268 (December 21, 2015).

⁸ The Zoning Board of Appeals may find that the . . . decision . . . is illegal, arbitrary, capricious, unreasonable, or unsupported by the preponderance of substantial, reliable, and probative evidence on the whole record,” and affirm, reverse, vacate or modify the decision based in a manner consistent with its findings. Code §1449-17.

⁹ Code §1435-09-2(a).

should comply with the same guidelines applicable to contributing structures, including the general and specific guidelines for new construction.¹⁰

Despite this clear directive, the HCB ignored virtually every guideline applicable to the rooftop deck in this case:

1. ***“Rooftop decks should not be highly visible from the principal façade.”***¹¹ In perhaps the most glaring refusal to apply the Guidelines to the Application, the HCB acknowledged and then unreasonably disregarded the high visibility of the deck in its Decision, stating that “[t]he terrace is visible from the right-of-way because of its location and the height of the Structure . . .” but that the roof top deck complied with the Guidelines because “at the request of the Urban Conservator, the Applicant set back the guardrail from the parapet walls to ***slightly diminish*** its visibility.” This finding not only flies in the face of the evidence before the HCB—including the commentary of both the Staff and HCB as to the highly visible nature of the rooftop deck¹²—but it is an unreasonable application of the Guidelines, which do not require a rooftop deck to be only of “slightly diminished visibility.”
2. The building design ***“must employ a strong element that terminates the uppermost part of the building.”***¹³ It is beyond debate that a highly-visible rooftop deck, employing open frames and fabric canopies, does not comply with this explicit requirement. (See Ex. A).
3. ***“Additions should not overpower the original building.”***¹⁴ Currently, the building on the Property is a single story, 1,156 square foot, masonry building. The Application is for a proposed metal-clad addition to the existing roof of 475 square feet as well as an exterior roof terrace of 875 square feet. The Applicant is proposing to double the height of the building and more than double the overall occupied square footage within the building footprint. The second story addition and roof terrace will have direct sight lines from the street level and will alter the original character of the Property.
4. ***“Roofs for new construction should be similar to roofs of adjacent and nearby buildings of similar size and use.”***¹⁵ As members of the Staff and HCB acknowledged, this proposal is the largest and lowest rooftop patio the HCB has approved.¹⁶ The approval authorizes an intense commercial application on a secondary street in a residential area; one that the Guidelines did not contemplate.¹⁷ It is therefore not

¹⁰ Non-Contributing Buildings, Section B. Specific Guidelines, Paragraphs 1 and 2 state that the rehabilitation of and additions to non-contributing buildings should comply with the rehabilitation and additions guidelines sections for Contributing Buildings. Additions, Paragraph 1 states that additions should follow the new construction guidelines.

¹¹ Site Improvements, Section B. Specific Guidelines, Paragraph 4 Decks.

¹² “We asked you to show the site lines to demonstrate how visible that is from the public right of way, and the answer is ***it’s highly visible from every public right of way*** of because it’s a one-story building that you’re putting a top on.” (Trans. 1, pp. 88-9); “Nothing is going to make this less visible” (Trans. 1, p. 61).

¹³ New Construction, Section B. Specific Guidelines, Paragraph 1 Composition- Top.

¹⁴ Additions, Paragraph 3.

¹⁵ New Construction, Section B Specific Guidelines, Paragraph 2 Roofs.

¹⁶ Trans. 1, p. 82.

¹⁷ See *Id.* at pp. 82-83 (discussion regarding the initial Application. Ms. Spraul-Schmidt: “I don’t think the guidelines anticipated a large patio deck above a one-story building. In fact, I’m sure they didn’t.” Ms. Strunc “I would agree, and there’s probably more coming in this regard as well”).

surprising that no other rooftop of similar size or use exists within the district. Although references were made to other outdoor spaces such as Kaze and Krueger’s Tavern, these establishments differ in material ways. Kaze is not a rooftop deck or surrounded by residences. Like Krueger’s Tavern, it is on Vine Street, which (unlike 14th Street or Republic) is an arterial road.¹⁸ With regard to use, it is important to note that Krueger’s Tavern—as well as Quan Hapa—has an agreement to close the outdoor spaces by 11:00pm as a courtesy to their neighbors.¹⁹

5. Finally, the HCB was required to ***“focus on the design compatibility with the surrounding contributing structures.”*** ***“The appropriateness of design solutions will be based on balancing the program needs of the applicant with 1) how well the proposed design relates to the original building and neighboring buildings and 2) how closely the proposal meets the intent of these general guidelines and the specific guidelines for new construction.”***²⁰ In this case, the HCB made no attempt to strike this balance. Had it done so, it would have concluded that Application failed to satisfy this Guideline requirement as well.

Most notably, it cannot be reasonably determined that the design is compatible with the neighboring residential buildings. The rooftop design in this case—at its core, a drinking establishment without walls—will put up to 70 individuals outside the living rooms and bedrooms of the surrounding residences. As observed by Zoning Administrator Matthew Shad, the design “basically is using everybody else’s buildings as the boundary.”²¹ With respect to the Trinity Flats building, the rooftop addition is 3.5 feet away and entirely encloses the neighbor’s deck on the second floor. (See Ex. A). Of greater significance, however, is the impact on the low income residents in neighboring buildings who do not have air conditioning and need to keep their windows open.²² When this is coupled with credible evidence that the sound produced by the rooftop bar is likely to create violations of the Code’s sound regulations²³ and the HCB’s recognition that residents will be left with no recourse to enforce any restrictions,²⁴ it cannot be reasonably determined that the design is compatible with the surrounding contributing structures.

B. The HCB’s Decision was based on a Misunderstanding and Misapplication of the Guideline’s Requirements for Non-Contributing Building

The transcripts demonstrate that the HCB was either unaware that the Guidelines applied to non-contributing buildings or it decided to simply exclude this Application from meeting those requirements.

¹⁸ See CAGIS (<http://cagisonline.hamilton-co.org/cagisonline/index.html>).

¹⁹ See Trinity Flats Home Owner Association letter (made part of the record Trans 2, p. 2.).

²⁰ New Construction, Section A Intent and General Guidelines, Paragraph 3; Additions, Paragraph 4.

²¹ Trans. 1, p. 67.

²² The HCB heard the testimony of the Over-the-Rhine Community Housing Executive Director and the Over-the-Rhine Community Council President regarding the impact on low income residents. Mary Burke Rivers, of Over-the-Rhine Council provided testimony on behalf of 45 residents who will be directly impacted by the rooftop bar. Both organizations join the undersigned in bringing this appeal.

²³ Applicant provided a "sound study" suggesting that the noise would be roughly 42 to 60 dB. See HCB Materials, Item 8, A7.01 (December 21, 2015). During Hearing 2, the HCB heard credible evidence that most Cincinnati restaurants are in the 74 to 89 dB range. See Trans. 2, pp. 21-22. These sound levels amount to prima facie evidence of a violation of § 909-3 of the Code, which prohibits noise over 65dB after 7pm on weekdays. It is frankly baffling how a design/use, which will result in the violation of the Code, can be found to be compatible with surrounding structures or further the integrity of the District.

²⁴ Trans. 2, p. 39.

On numerous occasions throughout the proceedings, the HCB and Staff members indicated that they were treating this proposal differently because it was a non-contributing structure. More troubling is that it appears that the HCB was entirely unaware that the Guidelines do in fact apply to non-contributing buildings. Chairman Burson, for example, commented as follows regarding the scope of the HCB's review: "Because, again, since there's no zoning implication here, the only implication—the only thing that—the only jurisdiction we have is over the guidelines. And this is a non-contributing building, so"²⁵ The following exchange further illustrates the HCB's apparent belief that the Guidelines do not require that non-contributing buildings satisfy the same requirements as contributing structures:

MS. SPRAUL-SCHMIDT: I want to ask a question of staff, again, about putting something like this deck, this commercial deck, in the direct line of view. We always ask for sight views; right? Does that – do you not see—

MS. STRUNC: Yes.

MS. SPRAUL-SCHMIDT: --that playing into it?

MS. STRUNC: Yes, we generally do. I think that *this is being treated slightly differently because it is a non-contributing building*.

MS. SPRAUL-SCHMIDT: I understand that. But the site view is more prominent because it's the second floor. And the setback is pretty minimal, that – I don't remember approving anything with a site view like this in the district.

MR. BURSON: *But is it because it's a non-contributing building, that our guidelines don't directly—*

MS. STRUNC: I think *we're being more flexible because of that*.

MS. SPRAUL-SCHMIDT: Can you go back to the guidelines on that, show us the guidelines on that?

MS. KELLAM: I didn't bring it. Sorry.²⁶

Although Kellam apparently retrieved the Guidelines and acknowledged that "there's no different set of guidelines, necessarily, for non-contributing buildings," she quoted for the HCB only those portions generally describing non-contributing structures and none of the specific guidelines applicable to the Application.²⁷ This is perhaps not surprising considering the Urban Conservator's recommendation included no discussion of the relevant Guideline provisions either. In its entirety the Revised Staff Report for the Certificate of Appropriateness reads as follows:

Although this is a noncontributing building, this is a rather large addition. The glass doors are an improvement over the metal garage doors. Overall staff finds that the applicant is improving a noncontributing building in the district.²⁸

The HCB's written decision also demonstrates an unreasonable application of the Guidelines to additions to non-contributing buildings. The Decision states that "[a]dditions to non-contributing buildings *should generally comply* with those guidelines that are applicable for proposed additions to

²⁵ *Id.* at p. 36.

²⁶ *Id.* at pp. 42-43 (emphasis added).

²⁷ *Id.* at p. 43-44.

²⁸ HCB Materials, Item 8 (December 21, 2015).

contributing structures.”²⁹ In fact, the Guidelines make no mention of general compatibility: “Additions to non-contributing buildings *should comply* with the guidelines outlined in the ‘Additions’ section of this document.” The Guidelines further indicate that additions “*should follow* new construction guidelines.” This is not just a matter of semantics; it is reflective of the HCB’s inattention to the specific requirements set forth by the Guidelines. As discussed above, the HCB ignored the Guidelines requiring that the rooftop not be highly visible from the principle façade, not overpower the original structure, employ a strong element that terminates the uppermost part of the building, and be similar to neighboring roofs of adjacent buildings of similar size and use. The HCB made no effort to apply these guidelines or, arguably worse, did not know they applied to non-contributing buildings.

As noted above, it is the HCB’s role to determine whether the application meets the Guidelines. For the HCB to unilaterally exclude this Application from the requirements of the Guidelines is both arbitrary and unreasonable. The HCB does not have the power to amend the applicable scope of the Guidelines, which was clearly defined by City Council when they were adopted. At a minimum, in order to constitute a reasonable decision, the HCB should be required to apply the relevant guidelines to the case before them.

C. The Evidence in this Case Overwhelmingly Demonstrates that the Application does not Substantially Comply with the Guidelines.

Applying the requirements as set forth in the Guidelines to this case conclusively demonstrates that the Application does not substantially comply with the Guidelines. The only findings relied on by the HCB in determining the rooftop addition/improvement³⁰ substantially complied with the Guidelines is that the design relates architecturally to the original structure and responds to the colors, textures, and materials found in the area by using commonly used materials.³¹ This is far from demonstrating substantial compliance with the Guidelines. Notably, the decision includes no finding that the design relates architecturally to the surrounding buildings (a requirement acknowledged by the HCB in its own decision). Moreover, the rooftop addition fails to satisfy virtually every other applicable requirement set forth in the Guidelines: it is highly visible from the principle façade, overpowers the original structure, fails to employ a strong element that terminates the uppermost part of the building, is not similar to any other roofs in the district, and the design is incompatible with the neighboring buildings.

D. HCB arbitrarily imposed the Procedural Requirements as set out in the Code, the Historic Preservation Guidelines, and the specific requirements it set out for the Applicant upon Tabling the Matter.

1. *The HCB blatantly disregarded the procedural requirements of the Code and abused its power when it extended its deliberations of the Application.*

²⁹ Decision, p. 4

³⁰ The HCB also concluded that the rooftop’s visibility was slightly diminished. However, as noted above, this misstates the Guidelines’ requirement that the rooftop not be highly visible from the primary façade and runs contrary to Staff’s and HCB’s actual observations during the hearing (“this is visible from every angle”; “nothing can be done to change the visibility”) as well as an objective, common-sense assessment of the design (see Ex. A).

³¹ Although it is outside the scope of the appeal, the HCB also noted in support of the rehabilitation portion of the application that “it is preferable to rehabilitate and reuse a non-contributing building than to have a vacant parcel or parking lot.” While this is an accurate quotation from the Guidelines, there is absolutely no basis for this conclusion. In defense of this exemption, HCB staff argued that failing to approve this inappropriate structure, the fourth corner of 14th and Republic would remain undeveloped. (Trans. 2: Ms Kellam: “We want to be able to reuse this building, if possible.”) There is no substantiation for this opinion, nor is it relevant to the issue of appropriateness of the proposed structure.

The HCB deliberated this Application at Hearing 1 on October 26, 2015 and the motion to approve the Certificate of Appropriateness failed in a tie vote. However, the HCB abused its power and continued to deliberate the matter after the vote was taken. The Rules of Procedure for the City of Cincinnati Historic Conservation Board states that during a hearing, “[i]f a motion is not seconded and is not eligible for a vote of the Board, the Chair shall entertain further discussion of the Board *until* a motion is made and seconded.” (emphasis added).³² The HCB made and seconded a motion to vote on the certificate of appropriateness.³³ However, after the vote was taken and the Application failed, the HCB continued to discuss the matter and made another motion to table the Application for 30 days.³⁴ ***It is a mockery of the Guidelines for the HCB to vote on a matter, to then allow the two board members who “lost” the vote to retroactively determine that they did not like the decision, and motion and second to change the outcome of the vote.***³⁵

In further disregard to the Code, the HCB tabled the motion at Hearing 1 on October 26, 2015³⁶ and did not make a final determination of the Application until Hearing 2, on December 21, 2015. Section 1435-09-1-B (Historic Conservation Board Review and Determination) of the Code states that “[a] tabled matter ***must be taken off table and finally determined within thirty (30) days after the matter was tabled.*** The Board may approve, approve with conditions, or deny an Application for Certificate of Appropriateness.” The Code clearly states that a decision must be rendered within 30 days, yet the HCB blatantly disregarded the thirty day requirement set out by the Code³⁷ and arbitrarily made an exception for the Applicant.

2. *The HCB approved the Application even though a preponderance of the evidence showed that the Applicant failed to fulfill the requirements as set by the HCB.*

The HCB also disregarded its own conditions set forth as justification for tabling the Application. During Hearing 1, the HCB tabled the Application “to allow the Applicant additional time to conduct meetings with the staff and the community.”³⁸ In Hearing 2, the Applicant made unsupported claims to have worked with the community to alleviate its concerns.³⁹ However, a preponderance of the evidence on the record shows that the Applicant failed to fulfill this requirement as set by the HCB.

The “community meeting” held by the Applicant provided little opportunity for the community members to participate, the Applicant misrepresented the outcome of the meeting to the HCB, and ultimately ignored the recommendations voiced by the community members.

The Applicant contacted a limited number of community members with a doodle poll on Monday, November 9 and held a “community meeting” 48 hours later, from 5pm to 6pm on Wednesday, November 11, 2015. The community meeting was attended by nine residents. Each attendee was limited to two minutes to express concerns. The Applicant did not provide the community members an opportunity to review and correct inaccuracies to the meeting minutes submitted to the HCB.

³² Item 8, of paragraph H (Hearing Procedure) of Section 5 (Hearing Procedures).

³³ Trans. 1, pp. 86-88.

³⁴ *Id.* at p 91.

³⁵ *Id.* at pp.87, 91

³⁶ *Id.*

³⁷ After the Application was tabled, the HCB had ample opportunities to render a decision at any of the regularly scheduled meetings on November 9, 2015, November 23, 2015 to which community members attended to speak in opposition of the Application, and December 7, 2015.

³⁸ Item 10 of Findings of Fact, Decision, Historic Conservation Board, City of Cincinnati (December 21, 2015).

³⁹ Trans. 2, pp. 2, 40.

Of particular relevance:

- i. The Applicant informed the community members during the meeting that the rooftop deck occupancy would be limited to 44 people.⁴⁰ At Hearing 2 the Applicant “reduced” maximum occupancy to 70 people.⁴¹
- ii. The Urban Conservator, at Hearing 1, recommended limited operating hours for the rooftop terrace, closing at 12:00am on Friday and Saturday and 10:00pm on all other nights.⁴²

Eight of the nine community members households present expressed serious concern over these late operating hours.

The Applicant, at Hearing 2, agreed to closing hours of 2:00am on Friday and Saturday and 11:00pm on all other nights.

The Applicant not only failed to address the primary concerns of the community members but it blatantly disregarded these concerns and proposed less restrictive hours and greater occupancy.

The number of community members that spoke in opposition to the Application at Hearing 2 is further evidence that the HCB disregarded the concerns of the community members. Nine residents, all of who live within close proximity of the Property, including Mary Burke Rivers, Executive Director of Over-the-Rhine Community Housing, representing 420 units in Over the Rhine and approximately 45 units in the area of the Property, spoke in opposition.⁴³ Speaking in favor of the Application were eight individuals; seven of whom were members or partners with the Lang Thang Group⁴⁴ and none reside near the Property.⁴⁵ It was unreasonable and unsupported for the HCB to approve the Application when the Applicant failed to meet the requirements as set out by the HCB, as shown by a preponderance of the evidence as outlined above.

E. CONCLUSION

In our opposition to the proposed Crown and Key Bar at 1332 Republic Street, we want to be clear that we are very supportive of the Lang Thang Group and its restaurants Pho Lang Thang and Quan Hapa, which is right around the corner from 1332 Republic Street. Furthermore, we do not wish to slow the development of OTR, or the exciting “entertainment district” areas of our neighborhood. We have welcomed other businesses to the store-fronts within feet of 1332 Republic Street. There are numerous possibilities for 1332 Republic that we would enthusiastically support.

However, the question is appropriateness for this specific location and on that basis, we appeal the recent HCB decision. The HCB's decision on this Application was an unreasonable and arbitrary application of the Guidelines. The HCB neglected to apply virtually every specific guideline applicable to the Proposal or, worse, unilaterally chose to exclude the proposal from satisfying the explicit requirements set forth in the Guidelines on the basis that it is a non-contributing building. At a minimum,

⁴⁰ HCB Materials, Item 4, Agenda, p 268 (November 11, 2015).

⁴¹ Trans. 2 pp. 6, 37.

⁴² Application for Certificate of Appropriateness Historic Conservation Board Public Hearing Staff Report, Recommendations, p. 3 (October 26, 2015).

⁴³ *Id.* at pp. 20-34.

⁴⁴ The Lang Thang Group is the group proposing the Application at issue.

⁴⁵ Trans. 2, pp. 10-20.

a reviewing body charged with determining whether a proposal is in compliance with specific guidelines must apply those guidelines to render a reasonable decision. The HCB failed to do this. Further, to add to the unreasonableness of its decision, the HCB likewise neglected to follow the procedures set forth in the Code. For the above reasons, we request that this ruling be reversed.

Sincerely,

Patricia J. Hord, 1329 Republic Street

John Hueber, president, John Hueber Homes

Mary Burke Rivers, executive director, Over-The-Rhine Community Housing

Ryan Messer, president, Over-the-Rhine Community Council

Mindy and Eric Hammer, 1408 Republic Street

Bonnie Neumeier and Michael J. Flood, 10 W. 14th Street

Nicholas Daggett and Emily Masi, 1412 Republic Street, Apt. 101

Jill and James Hider, (committed) owners of 1325B Republic Street

Exhibit A



EXISTING FROM NORTHWEST CORNER AT 14TH AND REPUBLIC



PROPOSED FROM NORTHWEST CORNER AT 14TH AND REPUBLIC

The patio indicated above will be completely enclosed by the proposed rooftop terrace. The distance between the structure on the Property and the adjacent building (1331 Vine Street) is 3.5 feet.⁴⁶

The distance between the Property and the residential building across 14th street is 36 feet. The units in this building have no air conditioning and residents need to keep their windows open.



Further, the proposed rooftop terrace uses the directly adjacent building, which is in the process of being converted into residential units, as its boundary with nothing to reduce the sound.

⁴⁶ HCB Materials, Item 8, Background, pp. 278, 281, 285 (December 21, 2015).