

Appeal of Outerbridge and Georgina Horsey

BZA Appeal No. 17971

November 2009

BOARD OF ZONING ADJUSTMENT
District of Columbia

CASE NO. 17971

EXHIBIT NO. 26

Issue 1: The 2nd-floor deck

Is the deck a part of the stairs and thus allowed by sec. 2503.4?

Or is zoning relief required because the deck extends rear-yard lot occupancy non-compliance?

Stairs and landings

- Sec. 2503.4 the key provision:
 - “Stairs leading to the ground from a door located on the story in which the principal entrance of a building is located may occupy any yard required under the provisions of this title.. The stairs shall include any railing required by the provisions of the D.C. Construction Code.
- What are “stairs”? No definition in Zoning Regulations.
- *Webster’s 3d New International Unabridged Dictionary*:
 - “**Stair**”
 - “1. A series of steps or flights connected by landings and passing from one level to another.”
 - 2a. Any one step of a series for ascending or descending to a different level.”

Stairs and landings are distinct.

- Regs say “stairs,” and *Webster’s* distinguishes “stairs” from “landings.”
- Viewing them separately is consistent with sec. 2503.4, which distinguishes “railings” from stairs.
- Also consistent with Building Code:
 - Must be a floor or landing at top and bottom of stairway.
 - Flight of stairs cannot have a vertical rise > 12 feet between floor levels or landings.
 - Minimum dimension of each landing “in the direction of travel.”

Consistent with Other Definitions

- *Webster's Unabridged* says:
 - **Landing:** “3. a level part of a staircase at the end of a flight of stairs or connecting the flight with another.”
 - Landings are “at the end” of stairs, not a part of them. They can be part of a *staircase*, however, which is defined as:
 - **Staircase:** “1a. the structure connecting a stairway: an enclosure for stairs (as of walls or railings). b. a flight of stairs with the supporting framework, casing and balusters.”
 - **Stairway:** “one or more flights of stairs and usu. connecting landings providing passage from one level (as of a building) to another.”

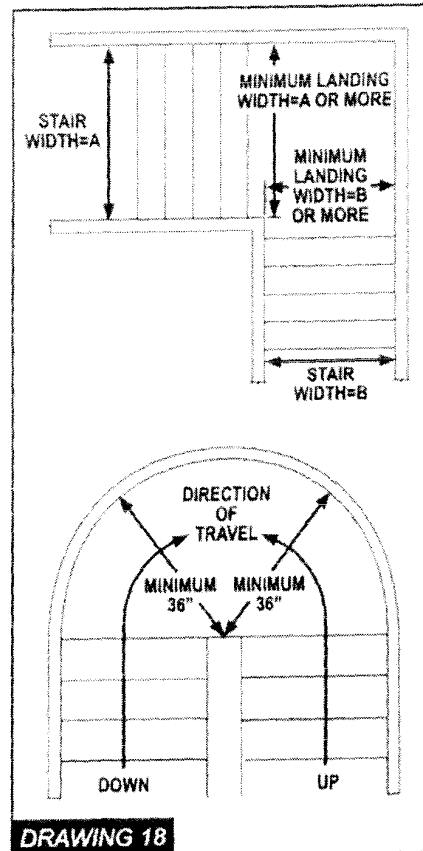
R311.5.4 Landings for Stairways.

There shall be a floor or landing at the top and bottom of each stairway.

Exception. A floor or landing is not required at the top of an interior flight of stairs, including stairs in an enclosed garage, provided a door does not swing over the stairs.

A flight of stairs shall not have a vertical rise greater than 12 feet (3658 mm) between floor levels or landings.

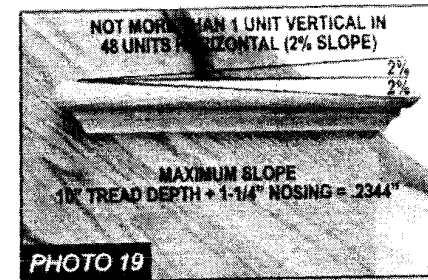
The width of each landing shall not be less than the stairway served. Every landing shall have a minimum dimension of 36 inches (914 mm) measured in the direction of travel. **DRAWING 18.**



R311.5.5 Stairway walking surface.

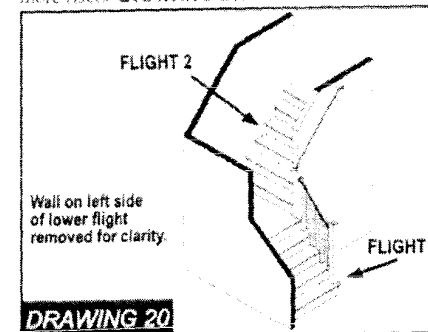
The walking surface of treads and landings of stairways shall be sloped no steeper than one unit vertical in 48 inches horizontal (2-percent slope).

PHOTO 19.



R311.5.6 Handrails.

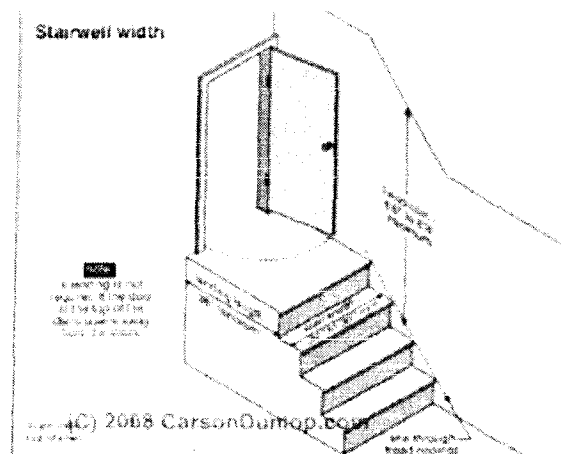
Handrails shall be provided on at least one side of each continuous run of treads or flight with four or more risers. **DRAWING 20.**



R311.5.6.1 Height. Handrail height, measured vertically from the sloped plane adjoining the tread nosing, or finish surface of ramp slope, shall be not less than 34 inches (864 mm) and not more than 38 inches (965 mm). **PHOTO 21.**



Stairway Height, Width, Headroom Code Specifications & Requirements



- Stairway headroom ($\geq 6'8"$ over tread or landing)
- Stairway maximum height ($\leq 12'$ between floors - this means landings could be required)

Sketch courtesy [Carson Dunlop](http://CarsonDunlop.com).

Stairwell width and stair landing platform requirements are summarized by this sketch.

The minimum recommended stair width is between 34" and 36" ACROSS.

The minimum recommended stair landing length is 36" (or a length and width sufficiently greater than the swing of the door if a wider door is present).

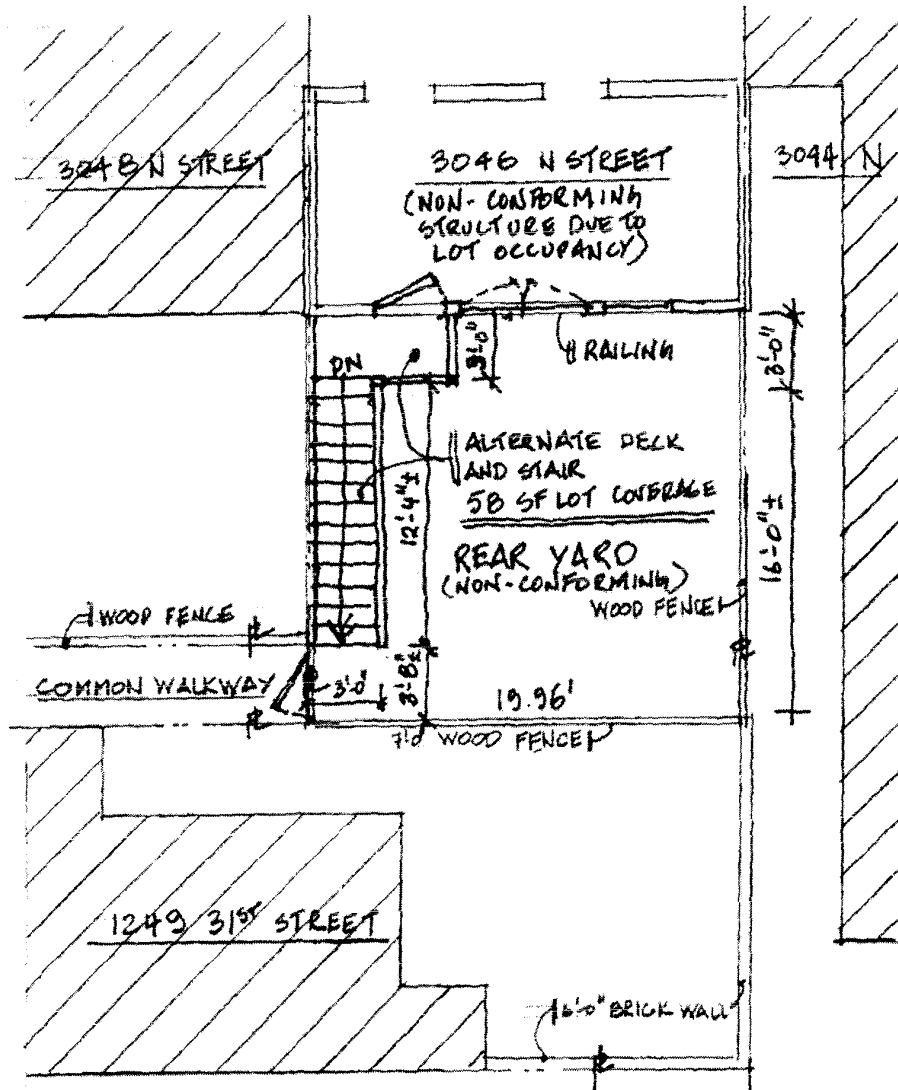
Notice that a stair top landing is not required if the

door at the top of the stair opens away from the stairwell.

In these sketches required handrails have been omitted for clarity.

Stairway Fire Stopping Code Requirements

Fire stopping for stairs is required to slow the



ASK 3.31-C - SUGGESTED ALTERNATIVE

3046 N STREET, NW AND ENVIRONS

SCALE: 3/16" = 1'-0"

O. Hovany, Architect/owner



Distinguishing landings from decks

- A functional test:
 - Is a landing functionally and solely associated with the goal of facilitating travel between the ground and the door?
- If “yes,” it can be a landing.
- If “no,” then it is not a landing.

Why a narrow reading matters

- Calling a deck a “landing” because some portion of it is near a door would undermine rear yard restrictions.
- The problem is acute here, as the case involves a non-conforming structure in the rear-yard.
- Though “stairs” may be allowed to connect a yard with an entrance on the main level, “landing” should be read narrowly here to avoid extending a non-conformity.
- A narrow reading is consistent with policy goals in Zoning Regs (sec. 101) re avoiding overcrowding of land, promoting public health, general welfare.

Prior decisions

- *Beins*, No. 14093 (1990): Stairs connected to a deck that has a door on it does legitimize the deck.
 - “Had the deck not been built, this stairway would not lead to the ground from a door.”
 - The key test here: The landing extends far beyond providing access to the door.
- ZA cites *Pastan*, No. 17476, which does not address this earlier decision or try to explain why it is wrong. No. 17676 stated without analysis that the “landing area” was part of a “stairway.”

Issue 2: The 3rd-story deck

Is a new deck an “addition” that requires zoning relief?

Or is it not an “addition” because it does not increase lot occupancy or FAR?

What is an “addition”?

- No definition in Zoning Regs.
- *Webster’s* says:
 - “1a: the result of adding: anything added; b: something added that improves or increases value”
 - “2: the act or process of adding: the joining or uniting of one thing to another”
 - “5a: a part added to or joined with a building to increase available space”

Zoning relief is needed

- Prior BZA decisions dealing with “roof decks” or “roof deck additions” assumed that these were “additions” and that zoning relief was needed.
- Supporting cases:
 - *Spence*, No. 15955 (1994): A deck built at the same level as main floor (and above garage) is part of the building area for defining lot occupancy. Variance relief needed (and denied).
 - *Borden*, No. 13486 (1981): Replacement for rotting deck disallowed when it exceeds existing extension into rear yard.
- Cases cited by Zoning Administrator do not undercut this.
 - *Hantho Associates*, No. 13207 (1980) – discussed “addition” on context of why the standards for a variance had been met – did not suggest a roof deck could be built as a matter of right.
 - *Foullon*, No. 13021 (1979) – discussion was in connection with neighbor’s objection to *use* of the property, not structural requirements.

When is an addition allowed?

- Sec. 2001.3 allows additions to non-conforming structures so long as:
 - Lot occupancy percentage requirements met.
 - Addition shall conform to use and structure requirements.
 - Addition shall not increase or extend an existing non-conforming aspect of the structure, nor create any new non-conformity of structure and addition combined.

A substantive change here

- The 3rd-floor deck adds to the non-conformity of the site. It creates new, usable space, and the fact that it is an open deck is irrelevant to the question of whether it is an “addition.”
- An application for zoning relief would be proper for the Board to consider questions of non-conformity and whether the proposed “addition” should be allowed under applicable BZA standards.