

The Finston Family
3514 30th Street NW
Washington, DC 20008-3250
202-364-7202 (t) 202-330-5550 (f) klingsfinston@gmail.com

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February 1, 2012

Mr. Clifford Moy,
Secretary to the Board of Zoning Adjustment
Government of the District of Columbia
Suite 210 South
441 4th St., NW
Washington DC 20001

Re: Submission for the Record – Case No. 18294,
Application of Paul and Emily Thornell, 3011 Ordway Street NW

Dear Mr. Clifford Moy,

Paul and Emily Thornell have applied to The Board of Zoning Adjustment for Special Exceptions to enable construction of an Addition to their existing home that would

- (1) Exceed the 40% lot occupancy allowed for a semi-attached house in the R-2 zoning district;
- (2) Violate the minimum 20 foot rear yard requirement by over 30% for the portion of the garden-level patio and second-floor deck closest to the alley and the closest adjacent property (3514 30th St., NW);
- (3) Remove one or more mature trees in violation of Tree Removal Limitations.

I appreciate this opportunity to provide the following comments and photos for the record. At the outset I would like to express my appreciation to the Applicants for providing their plans developed over the past six months as the project has advanced. It is difficult for me to weigh in as a non-expert, and so I also appreciate the opportunity to provide my observations as a neighbor and as a Party who will be substantially affected by the proposed project.

Problems with Timeline of the Project and Supporting Documentation

Since June 2011, Applicants have provided a variety of planning documents to Washington DC authorities that show how the proposed construction has evolved, particularly with regard to the footprint of the construction in the rear of the yard closest to my house at 3514 30th St., NW., as follows:

- The May 23, 2011 "Plan for Building Permit" includes a modest "Covered Porch" that would not violate the minimum rear yard requirement. These are the plans that were provided to me together with form letters to sign in support, as provided to other neighbors.

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- The August 5, 2011 "Site Plan" Includes a "Proposed Screen Porch" and/or "Proposed Terrace." In the letter submitted to the Office of Zoning, dated August 17, 2011, the explanation given is as follows:
"The project includes a single-level 7- 1/2' wide screened porch to extend 14 additional feet toward the rear of the property."
- On October 4, 2012, Applicants first indicated that they would require a 30% variance from the minimum rear yard requirement relating to the portion of the project closest to my home at 3514 30th St., NW.
- The final submission to the BZA, dated December 9, 2011 "Garden Lvl Plan A101," and "Street Lvl Plan," explains the need for the Special Exception from the rear yard minimum requirement. *Dated several months after the August 22 letters from neighbors and weeks after the October 17 ANC Resolution*, it includes two separate outdoor living spaces as part of the project, namely an outdoor patio (app. 17.5ft x 14 ft) to will run the full width of the house and a 2nd floor deck above (14 ft. x 7.5 ft).

Based on the most recent materials submitted to the BZA, Applicants now plan two separate outdoor living spaces – a full-size ground level patio running the width of the house with permanent indoor/outdoor furniture and a narrower elevated deck – both of which will be uncomfortably close to my house and my neighbors on 30th Street. **The proposed construction that would nearly double the size of their house from approximately 1700 sf to over 3100 sf is only possible with BZA approval for Applicants' Special Exceptions.** The rear structures that require a Special Exception to minimum rear yard requirements would both be located on the ravine overlooking my deck and yard, less than 20 feet from the alley immediately adjacent to my property. In sum, this project will compromise my privacy of use of my own deck and yard and the enjoyment of my property.

Based on the timeline for the project, it appears that these facts may not have been clear to neighbors (see attached letter from Mr. Jeffrey Kaye and Mr. Scott Mezistrano, dated January 31, 2012) and/or to the ANC at the time that Applicants solicited supporting documents. All of the supporting letters of August 22, 2011 pre-date by several months the final plans that the Applicants now are asking the BZA to approve. The ANC resolution of October 17, 2011 also pre-dates the Thornell's submission of revised plans that make clear the extended footprint of the house to add two separate levels of outdoor space.

Inaccuracies in Diagrams and Photos

Second, recognizing the efforts made by the Applicants to provide comprehensive photos and plans, a number of diagrams and photos inaccurately convey boundary information, omit key structures, and seek to minimize the impact on the proposal on the 3500 block of 30th St., N.W., as follows:

- Applicants' photo marked as "View from Ordway From Alley Behind" (Photo 1) submitted at the Hearing on January 17 obscures my garage (Photo 2), located between the garages pictured and the Applicant's lot.



Photo 1. Applicant's Photo: VIEW OF 3011 ORDWAY FROM ALLEY BEHIND

Photo 2: Photo of of the same alley showing my garage, taken January 27, 2012.

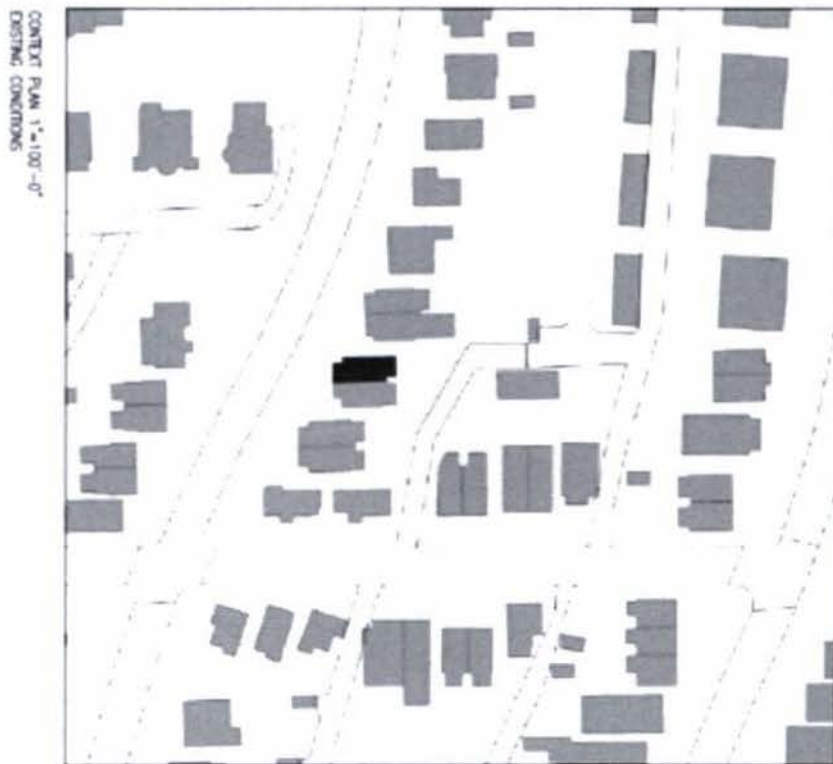


Diagram 1: Applicants Context Plan submitted to the BZA omits 3514 30th St. NW Garage and Deck; and misstates property line between 3412 & 3514 30th St. NW

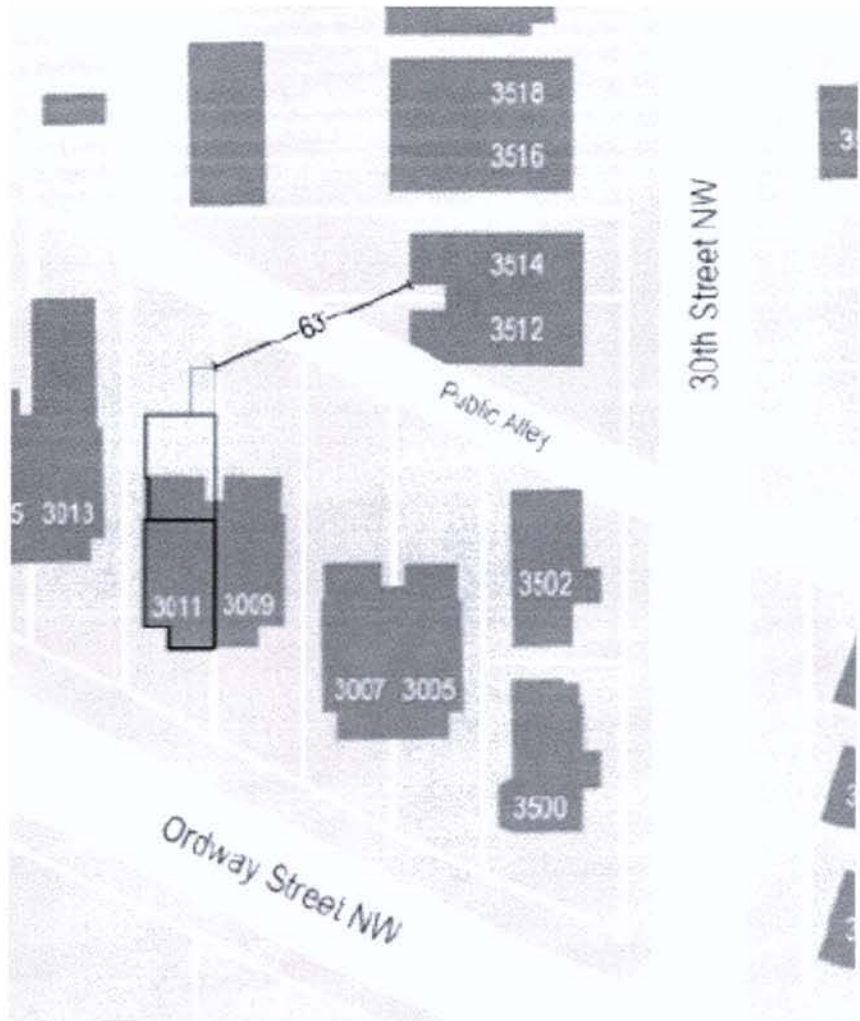


Diagram 2: Applicants Context Plan (extract) also omits garage, deck, and overstates distance

- Diagrams 1 and 2 (previous page and above) show Applicants' Context Plans submitted to the BZA that omit key structures including the garage and deck at 3514 30th St., NW, resulting in an exaggerated distance between 3011 Ordway St., NW and my home at 3514 30th St. NW

These photos and exhibits were submitted in response to my request for Party Status, and appear to show that my home would not be affected significantly. However, it is not an accurate representation of the proximity of my property to the Applicants.

- Applicants' photo marked as "Neighboring House Location – Views from Alley (Photo 3). exaggerates impact of the Non-Permitted Deck at 3013 Ordway St. NW, compared to the proposed project at 3011 Ordway St. NW, where Applicants understate potential loss of air, privacy and enjoyment from the project (See Photo 4). Applicants consistent theme is that the Deck at 3013 Ordway St. NW is more intrusive, and photos submitted emphasize that point.



NEIGHBORING HOUSE LOCATION - VIEWS FROM ALLEY



Photo 3: Applicant's Photo of Views from Alley (emphasizing Deck at 3013 Ordway St. NW)
Photo 4: *View of 3011 and 3013 Ordway St. NW from my back door taken January 24, 2012 more accurately reflecting their relative visual impact.*

Photo 3 above also is problematic as I am concerned not with the view from the alley, but with the view from my home, deck and inside my yard where my house is closer to 3011 Ordway St., NW than to 3013 Ordway St., NW where their construction will have a much greater impact on my privacy and enjoyment of my property. (Applicants' architect visited my home on January 23, and confirmed that Applicants' back yard is adjacent to my yard, across the narrow alley.)

Applicants are represented by able professionals and should be held to a high standard in meeting the duty to submit documentation that accurately reflects the relationship and impact on adjacent houses in the neighborhood for purposes of evaluation either by the ANC or the BZA.

Reliance on Precedent of Non-Permitted Deck at 3013 Ordway, NW

Third, Applicants should not be allowed to rely on the existence of the non-permitted, likely non-conforming Deck constructed at 3013 Ordway St. NW as justification for their plan to nearly double the size of their house from 1700 sf to 3100 sf. where similar houses on Ordway St. NW and 30th St. NW all are approximately 1700 sf.

At the January 17, 2012 Hearing of the BZA, Applicants pointed to the deck at 3013 Ordway St. NW, as more non-conforming and more intrusive than their own project as justification for BZA approval of the Special Exceptions. Applicants' house at 3011 Ordway St. NW, however, is closer to my house at 3514 30th St. NW than the Deck at 3013 Ordway St. NW, and the scale of the project is larger still.

Applicants need approval for Special Exceptions relating both to maximum lot occupancy, minimum rear yard requirements, and removal of mature trees in order to add an addition of over 1400 sf that would nearly double the size of their current house from approximately 1700 sf to over 3100 sf, out of scale with all neighboring semi-attached houses. **Grant of Applicants' Special Exceptions would fundamentally alter the current zoning plan, where semi-attached homes on Ordway St. NW, and 30th S. NW are approximately 1700 sf, and will create an intolerable loss of privacy and**

enjoyment of our own house and our neighbors on the 3500 block of 30th St. NW.

As viewed from the public alley the addition will intrude on the privacy and enjoyment of the 3500 block of 30th Street NW, including substantial impairment of enjoyment of the deck and yard of 3514 30th St. NW.

Our small part of Cleveland Park is a high-density community with the Ordway St. NW houses 'cheek by jowl' on very small lots situated above a ravine overlooking the 3500 block of 30th Street, NW. Given the limited lot size, even a modest addition to the houses on Ordway Street NW may unfairly burden neighbors below on 30th Street. Currently, the semi-attached houses on Ordway and 30th Street NW in the immediate area have the same structure and square footage at averaging approximately 1700 sf.

Two additional row-houses behind my house at 3005 and 3007 Ordway St. NW (Photo 5 below), that also overlook our house (3514 30th St., NW) on the ravine behind the alley and are nearly identical in appearance, size and structure at present.



Photo 5: 3005 and 3007 Ordway St. NW, rear views, taken January 17, 2012

There is no significant difference between the house of the Applicant or the slope of the yard to neighboring houses. (In fact, they look so similar that the very rainy day of the hearing I accidentally brought photos of the wrong neighboring houses because the view from the back is so similar.)

Emily Thornell has stated that she believes that her family should be allowed the Special Exceptions required to nearly double the size of their house from approximately 1700 sf to over 3100 sf and that all of the Ordway neighbors may then follow suit. Her statements support the conclusion that grant of these Special Exceptions would undermine the current zoning pattern and cause substantial hardship for 30th St. NW neighbors.

In past cases heard by the BZA where the Applicants' house is currently of a typical size, structure and style as other houses in the immediate area, the BZA has generally not favored grant of a Special Exception, as this would tend to substantially alter the existing zoning plan for the area. "[T]he Zoning Regulations intend to provide minimum spacing between residential structures. If each residential structure that is located close to the site is permitted to build into the rear yard, the development of the area would be substantially different from the existing pattern." (Application No. 15921 of Mr. and Mrs. Per Nguyen, Final Order dated May 29, 1997, p. 3, denying the exception sought for a variance from the rear yard requirement to construct an addition and deck).

In this context, the October 17, 2011 ANC Resolution submitted by Applicants appears to miss the key facts of the project, and mistakenly concludes that "proposed addition is small in scale and does not intrude upon the character, scale and pattern of houses along the street frontage."

Lack of Demonstration of Uniqueness of Property/Practical Difficulty

Looking again to past decisions, the BZA has in the past provided Special Exceptions where Applicants have established (1) uniqueness of the property and (2) practical difficulty of the applicants to make use of the property without a Special Exception:

The Board is authorized to grant variances from the strict application of the Zoning Regulations to relieve difficulties or hardship where "by reason of exceptional narrowness, shallowness, or shape of a specific piece of property ... or by reason of exceptional topographical conditions or other extraordinary or exceptional situation or condition" of the property, the strict application of the Zoning Regulations would "result in particular and exceptional practical difficulties to or exceptional or undue hardship upon the owner"

Application No. 17736 of District-Properties.com, LLC, Final Order dated December 31, 2008, p. 5, citing D.C. Official Code § 6-641.07(g)(3) (2001))

In this context, Applicants do not assert that their house is smaller than neighboring semi-attached homes (it is not), or that the lot is substantially different in size, slope or other way from their immediate neighbors (there is no substantial difference).

Though the slope is a common characteristic of the general area, Applicants claim the slope of their lot as a practical difficulty. In similar cases, the BZA has in the past found otherwise: "The property has rowhouses on either side, and a major slope from the alley to the level of the houses. The lots are the same size and the topography is similar." (Application No. 12974 of Morris Battle, Final Order dated September 10, 1979, p. 2, exception refused, concluding that "there is no practical difficulty inherent in the property. The only hardship or difficulty alleged by the applicant does not pertain to the property but to the area as a whole, and is not a basis for the granting of a variance." See also See Application No. 15921 cited above, p. 3 "There is nothing unique or exceptional about the property that would prevent the owners from making reasonable use of it.")

Even where the criteria above are met, Applicants still have the affirmative obligation to demonstrate that there will be no harm to neighboring households, a burden which they have not met.

At the hearing on January 17, 2012 Applicants cited the non-conforming deck built by neighbors at 3013 Ordway St. NW as justification for their own construction. For example, the Applicants have asserted that the recently erected Deck at 3013 Ordway St. NW blocks the sun from the West and casts a shadow on 3514 30th St. NW., a larger shadow than may well be cast by their own project.

Following the BZA Hearing on January 17, 2012, I have initiated a complaint against the non-permitted construction at 3011 Ordway St. NW. Rather than rely on that precedent, Applicants should show that their project would not, in the absence of the new construction at 3013, significantly affect light and air for neighbors below.

In fact, in contrast with the deck at 3013 Ordway St. NW which is not a solid structure, the project at 3011 Ordway St. NW includes a three-floor addition and deck in excess of 1400 sf of new usable space that is only made possible by grant of a Special Exception to the 20 foot minimum rear yard requirement. Therefore, it is highly likely to have a significant impact on the light available to 3514 30th St. NW located below the ravine. Apart from the casual observations of the Applicants' architect, Mr. V. W. Fowlkes, no data was presented to bear out assertions as to absence of impairment of light or air.

At the January 17, 2012 BZA Hearing, I noted that due to the elevation above the 3500 block of 30th Street, there is a perception of heightened proximity from the houses above, and magnification of all activities and related sound from our neighbors on the 3000 block of Ordway St. NW. Applicants had no response to that point at the hearing, and the Office of Planning (OP) also acknowledged that it had not taken the issue of the elevation and associated acoustics into account in making its assessment and recommendation.

A second factor that the Applicants did not address at the Hearing is the loss of one or more mature trees, where we currently benefit from leaf cover in the summer that

creates the illusion of privacy in close quarters. Given how small the lots are, mature trees and current green space helps to provide an illusion of privacy for us and our neighbors on 30th St. NW that look up at the houses on Ordway St. NW.

Applicants' construction will by necessity reduce the green buffer zone between our properties, and include removal of 1 – 2 old growth trees. This green space of the ravine that separates the houses on Ordway St. NW from the back of the 3500 block of 30th St., NW makes the current decks nearly invisible in the summer to neighbors. So, contrary to the assertion of Applicants, the existing deck at 3011 Ordway St. NW is not unsightly and does not need cosmetic improvement.

In this context, Applicants have failed to respond to the concerns raised in terms of loss of green space and possible impact of the project on the privacy and enjoyment of adjacent and nearby properties.

For all of these reasons, I ask that the BZA withhold permission for the Special Exceptions requested by Paul and Emily Thornell for 3011 Ordway St. NW.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Susan K. Finston", with a stylized flourish at the end.

Susan K. Finston

Attachment:

Letter from Mr. Jeffrey Kaye and Mr. Scott Mezistrano, January 31, 2012

Jeff Kaye
Scott Mezistrano
3512 30th St, NW
Washington, DC 20008
202-244-2039
kmez@erols.com

Mr. Clifford Moy, Secretary
Board of Zoning Adjustment
District of Columbia
Suite 210 South
441 4th St., NW
Washington, DC 20001

RE: Case No. 18294
Application of Paul and Emily Thornell
3011 Ordway St., NW

Mr. Moy:

We hereby state our *opposition* to the request for a special exception to enable construction of an addition to the Thornell's home. This is not to say that aren't open to consideration of a request for a special exception for a scaled-back version of such an addition.

We originally indicated our support for this request for an exception (we signed a document provided by the Thornells), but, as pointed out by the submission of Susan K. Finston, the plans submitted now more clearly indicate the degree of expansion involved in this project, as well as the corresponding degree of encroachment on the enjoyment of our property.

We agree with Ms. Finston's conclusions that the proposed addition would

1. exceed the 40%-lot-occupancy allowed for a semi-attached house in the R-2 zoning district,
2. violate the minimum 20-foot rear-yard requirement by over 30% for the portion of the garden-level patio and second-floor deck closest to the alley and the closest adjacent property (Finstons home, 3514 30th St, NW), and
3. remove one or more mature trees in violation of Tree Removal Limitations.

Our home, 3512 30th St, NW, would likely be even more significantly affected than the Finstons' in terms of loss of light, loss of enjoyment of our property, and noise from a home/deck that would become that much closer to ours.

The Thornell's project, as we now understand it, would increase the size of their home by over 75%, bringing it significantly out of scale from the other homes in our neighborhood, and setting an unacceptable precedent.

Thank you for your consideration.

