



BEFORE THE ZONING COMMISSION AND
BOARD OF ZONING ADJUSTMENT OF THE DISTRICT OF COLUMBIA



FORM 153 – MOTION FOR RECONSIDERATION OR REHEARING

Before completing this form, please review the instructions on the reverse side. Print or type all information unless otherwise indicated. All information must be completely filled out.

CASE NO.:

18294

Motion of:

☐ Applicant

☐ Petitioner

☐ Appellant

☒ Party

☐ Intervenor

☐ Other

Motion for:

☒ Reconsideration

☒ Rehearing

Points and Authorities:

Below and/or on a separate sheet of 8 1/2" x 11" paper, state each and every reason why the Zoning Commission (ZC) or Board of Zoning Adjustment (BZA) should grant your motion, including relevant references to the Zoning Regulations or Map.

The Board of Zoning Adjustment (BZA) should grant this motion in BZA Application No. 18294 for Reconsideration and Rehearing in order to correct serious and substantial errors in both the admission and rejection of evidence critical to the Findings of Fact in the final BZA Order, the misapplication of relevant standards for adjudication of zoning exceptions and an incomplete and/or erroneous understanding of the facts and/or findings of fact presented by Parties. Attached is a full outline of the Errors of Fact and Law together with a detailed Request for Relief.

CERTIFICATE OF SERVICE

I hereby certify that on this

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day of

July

,

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I served a copy of the forgoing motion or request to each Applicant, Petitioner, Appellant, Party, Intervenor, and the Office of Planning

the above referenced ZC or BZA case via:

☒ Mailed letter

☒ Hand delivery

☐ E-Mail

☐ Other

Signature:

BOARD OF ZONING ADJUSTMENT
District of Columbia

Print Name:

Matthew and Susan Finston

CASE NO. 18294

Firm/Organization:

n/a

EXHIBIT NO. 43

Address:

3514 30th St NW

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To be notified of hearing and decision: (Maker of Motion/Request or Authorized Agent)

In the event an authorized agent files a motion on behalf of the Maker of the Motion or Request, a letter signed by the Maker of the Motion authorizing the agent to act on his/her behalf shall accompany the notice of application, petition, or appeal.

Print Name:

Address:

Phone No.:

E-Mail:

**Attachment: Motion for Reconsideration and Rehearing
in Case. No. 18294**

The Board of Zoning Adjustment (BZA) should grant this motion in BZA Application No. 18294 for Reconsideration and Rehearing in order to correct serious and substantial errors in both the admission and rejection of evidence critical to the Findings of Fact in the final BZA Order, the misapplication of relevant standards for adjudication of zoning exceptions and an incomplete and/or erroneous understanding of the facts and/or findings of fact presented by Parties.

Taken together, these errors cumulatively contribute to substantial and grave errors in the Conclusions of Law in the BZA Order, suggesting bias in favor of the Applicant and against 30th Street NW neighboring property owners in the weighting and selective adoption of conclusions of fact and law. Both as parties and non-parties, neighbors living on 30th St., NW have made efforts to submit letters, related evidence and exhibits into the record demonstrating the adverse impact of the proposed addition on privacy and enjoyment of property. One property owner has even taken the step of becoming a Party in Case No. 18294. Nonetheless, the BZA has systematically ignored or minimized the interests of 30th Street NW neighbors.

I. Errors of Fact

- (1) Physical location and proximity of properties located north of 3011 Ordway St., NW (cited in para 3 of Findings of Fact).

The first critical error of fact in the BZA opinion is in para 3. of the Findings of Fact where it is stated that the alley separating 3011 Ordway St. NW and the 30th St. NW neighbors is 15 feet wide.

In fact, the alley between 3011 Ordway St. NW and the 30th St. neighbors has long been known to be a non-conforming, narrow alley and measures exactly 9.5 feet in width, providing an insufficient buffer in the absence of the requirement of a 20-foot minimum rear yard requirement. This error is repeated throughout the BZA Order.

- (2) Description of the proposed non-conforming addition (cited in para 7. of Findings of Fact);

The subjective statement that “the proposed addition will replace an existing wood deck with an addition that does not overpower the existing house and retains elements of the house’s materials,” in para 7 is not supported by the facts and merely parrots back the inaccurate language in the Applicant’s original BZA submission.

Applicants final plans submitted to the BZA in December 2012, however, demonstrate that they do not seek simply to replace the deck with a structure that is more similar to the elements of the house’s materials. Instead they seek to increase the footprint of the house from 928 square feet to 1427 square feet or 154% of the current footprint, resulting in a structure that would be out of scale and conformity with the existing community. Other evidence and exhibits also were submitted on this point, and should be reflected in this Conclusion of Fact characterizing the nature of the proposed addition.

As currently drafted, para 7. in the Finding of Facts is both erroneous on its face and demonstrates possible bias in favor of the Applicants and against the 30th Street NW property owners.

- (3) Views of the proposed addition from public ways including the adjacent alley to the north (cited in para 9, Findings of Fact).

Evidence and exhibits placed in the record demonstrate the intentional efforts of Applicants to mislead the BZA with regard to the relevant distance, proximity of the addition to adjacent buildings and views from the public ways including the adjacent alley to the north. Despite this, the BZA Order repeatedly cites Applicants' misleading photos, elevation plans, sections and/or site plans.

Furthermore, Applicants registered representative has failed to meet his duty to represent the facts in good faith to the adverse Party and other 30th Street NW neighbors. At the explicit instruction of Applicants, he has refused to provide copies of Applicant's filings to the adverse Party.

Applicants' registered representative also consistently has made vague and intentionally misleading statements, including as relates to plans to remove several mature trees. It is clear to anyone looking at site that Applicants plans include removal of mature trees including one that is more than ten feet in circumference, and that this is required in order to construct the proposed addition. Removal of this green cover will further negatively effect the privacy and enjoyment of property of the 30th Street NW neighbors and may also have adverse environmental impact.

Finally, Appellant's representative has intentionally submitted photos, drawings and other graphical representations that have been shown to be inaccurate or misleading. The BZA accordingly has based its factual conclusions on inaccurate and misleading documentation.

- (4) Likelihood of impairment of use and enjoyment of neighbors to the north of 3011 Ordway St., NW due to the provisions of the required rear yard and the 15 foot-wide public alley. (cited in paras 11 and 12 of Findings of Fact; see also points (1) and (2) above).

In footnote 1 on page one of the BZA Order, the Board concludes that it is waiving the requirement for rear yard relief, due to the average rear yard vs. the actual rear yard at the point it would be closest to 30th St. NW neighbors. While the Board may create the legal fiction of a 20-foot minimum rear yard in this case to waive the requirement for a special exception, that is not the same as actually creating 20 feet of space across the width of the property line. The distance between the proposed structure and the property line will be 13' 9" for one-third of the lot.

Accordingly, it is a clear and important error of fact for the the Board to state in both para 11 and 12 of the Conclusions of Fact that the proposed addition will have a

conforming rear yard – i.e., provide a minimum of 20 feet from the property line to the addition – and so will not significantly affect neighboring properties light, air, privacy or enjoyment of property. The most intrusive aspects of the proposed addition will also be the closest to 30th Street NW neighbors, i.e., 13' 9" from the alley.

Furthermore, the 13'9" distance is measured on a very steep slope, and does not represent horizontal distance from the proposed structure to the property line. The actual horizontal distance is much less, as raised at the initial Hearing, and supported by evidence and exhibits submitted by 30th Street neighbors and this Party. This key point goes directly to the likelihood of impairment of privacy and enjoyment by neighboring property owners and is neglected by the BZA Final Order.

Similarly, the Board relies on an error of fact in stating that a 15-foot alley will provide a buffer zone for the 30th St. NW neighbors when the alley is only 9.5 feet in width.

- (5) Likelihood of visual intrusion of the proposed addition upon the character and scale and pattern of neighboring homes (cited in para 13 of Finding of Facts).

The BZA erroneously fails to note, again, that the scale of the proposed addition is large in comparison to the current footprint of the existing structure, where the total area of the footprint would increase from 928 square feet to 1427 total square feet according to the Applicant's own filings with the BZA. The proposed structure would be 154% the size of the current dwelling, and of all neighboring properties on similarly sized lots.

By identifying only the total square footage requested in the exception (99 square feet) as opposed to the size of the overall resulting structure (154% of the size of the current dwelling), the BZA demonstrates bias in favor of applicants and fails to address evidence in the record that this proposed addition would undermine the zoning pattern in terms of the scale and pattern of semi-attached Wardman-style townhouses on Ordway St. NW and 30th St. NW.

- (6) Omitted Finding of Facts

The BZA also erroneously failed to address the factual issues of greatly increased noise both due to the final revised plans submitted by Applicants in December 2011, and the topography and elevation of 3011 Ordway NW, as compared to the 30th Street neighboring properties below that will magnify sound from the permanent outdoor living space/enclosed porch/ new deck in the proposed plans.

The changes to the plans submitted following the ANC and OP reports to the BZA are key facts that also are not addressed and they are important because these plans clearly spell out the addition of two permanent outdoor living spaces that will result in a substantial impairment of privacy and enjoyment of property, including noise and proximity of windows at elevations and close proximity and at times when neighbors may be most likely to have their own enjoyment impaired. This is further exacerbated by the planned removal of mature trees, including a tree that is over 10 feet in

circumference, another point that the BZA fails to address in discussion of the impact on privacy and enjoyment of property by 30th Street NW neighbors.

II. Misapplication of Relevant Standards

(1) Misapplication of relevant standards for grant of a special exception

The BZA Order misapplied the general test contained in §3104.1 in granting Applicants' request for special exceptions. The BZA Order states that: "the Board concludes that the requested special exception will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps. The Proposed addition will not change the residential use of the dwelling and will be in harmony with the existing residential neighborhood." (Conclusions of Law, p. 5)

In this context, the plain English meaning of the term, "in harmony" is defined as remaining in good order or congruity of parts to their whole or to one another.

First, a determination that the use will remain residential is plainly insufficient grounds for supporting grant of a zoning exception.

Second, evidence was placed in the record to demonstrate that the dwelling as currently constructed, is identical in terms of square footage, foot-print, land use and in every other way to the surrounding neighborhood properties both on Ordway St. NW and 30th St. NW and that in contrast the proposed addition would increase the footprint from 928 square feet to 1427 square feet for a footprint that is 154% of the total current dwelling, based on the Applicant's own filings with the BZA. The proposed structure would be obviously and blatantly out of symmetry with the surrounding houses.

Given the lack of symmetry and scale of the proposed dwelling with other similar semi-attached Wardman-style row houses on Ordway St., NW and 30th St., NW, it is not possible to conclude that the overall proposed structure could remain "in harmony" with the existing residential neighborhood.

(2) Misapplication of relevant standards for 'special conditions' of an addition under §223.1.

Here the BZA misapplied the relevant standards relating to 'special conditions' in three (3) critical areas, as follows:

232.2(b). The privacy of use and enjoyment of neighboring properties shall not be unduly compromised.

The BZA has egregiously and negligently misapplied the relevant standard where substantial evidence and exhibits were provided by Parties as well as non-Parties as to the likelihood of loss of privacy of use and negative impact on enjoyment of neighboring properties that would be exacerbated by loss of green cover and vegetation, as well as by the slope and height of the proposed addition and the impact of slope on noise levels in terms of a 'megaphone' effect on noise created by the location of 3011 Ordway St.

NW at the top of the hill and the location of houses to the north of 3011 Ordway St. NW on 30th St. NW that all lie below and across the alley. There is no consideration of the placement of the windows in the proposed addition relevant to the properties both at 3512 and 3514 30th St. NW and the impact on privacy and enjoyment of property including the deck and back yard of 3514 30th St. NW.

A reading of the order does not show that the BZA distilled, understood or fairly considered the substantial evidence presented, and there is no discussion of the impact of these factors on the proposed addition in terms of the clear negative effect on privacy and enjoyment of use for neighbors on 30th St. NW. **Accordingly, the BZA misapplied the relevant standard in concluding that conditions of §22.2(b). have been met.**

2232.(c) The addition, together with the original building, as viewed from the street, alley and other public way, shall not substantially intrude visually upon the character, scale and pattern of houses along the subject street frontage.

The BZA has egregiously and negligently misapplied the relevant standard where the addition will visually intrude on the alley where it will exceed the 20 foot rear yard minimum and will be clearly visible from 30th Street and represents a complete departure from the character, scale and pattern of houses. Again, this ignores the impact of the proposed addition on 30th Street NW property owners.

A reading of the order does not show that the BZA distilled, understood or fairly considered the substantial evidence presented, and there is no discussion or consideration of how the proposed addition will intrude visually upon the character, scale and pattern of 30th St. NW properties. **Accordingly, the BZA misapplied the relevant standard in concluding that the conditions of §22.2(c). have been met.**

2232.(d) In demonstrating compliance with paragraphs (a), (b), and (c) of this subsection, the applicant shall use graphical representations such as plans, photographs, or elevations and section drawings sufficient to represent the relationship of the proposed addition to adjacent buildings and views from public ways.

The BZA has egregiously and negligently misapplied the relevant standard in concluding that Applicants have demonstrated compliance with submission of required graphical representations. Substantial evidence and exhibits were placed in the record that show errors and omissions of the Applicant's submissions including in the incorrect placement of boundaries, overstatement of distances, and even omission of structures on the property of 3512 30th St. NW and 3514 30th St. NW. Moreover, Applicants have expressly directed their official representative not to provide copies of all filings to this adverse Party, continuing their effort to obfuscate the record and make it as difficult as possible for this 30th Street property owner to engage effectively in the process.

Instead of finding that the Applicants have failed to meet the required standard, the BZA Order relies on Applicants' misleading graphical representations. Applicant's representative – a professional architect with requisite experience and skill – has

submitted graphical misrepresentations and intentionally misleading photographs, elevations and/or section drawings. These include:

- (a) photos that misrepresent the relative location and proximity of structures clearly visible to the photographer taking photos on behalf of the Applicants,
- (b) the property lines, and
- (c) structures that are available in the public record, and visible on Google Earth.

Accordingly, the BZA misapplied the relevant standard in concluding that the conditions of §22.2(d). have been met.

III. Incomplete and/or Erroneous Understanding of the Facts

The BZA correctly states that as a general rule it is obligated to give great weight to ANC recommendations. However, to do so in this case is erroneous due to the incomplete / erroneous understanding of the facts as contained in the BZA Order.

- (1) Only in cases only where the ANC has provided detailed narrative analysis and justification of the stated recommendation is it considered appropriate for the BZA to give weight to the ANC recommendation. In this case, however, evidence has been placed in the record that there was no detailed analysis or justification of the ANC recommendation. This is clear on the plain face of the submitted ANC report.
- (2) The BZA erroneously relied on ANC and OP reports made prior to the the submission of final plans. Evidence and exhibits were placed in the record to demonstrate that the plans changed significantly following those bodies' review of the proposed addition, particularly with regard to the plans for the new outdoor permanent living space / enclosed porch / deck at the rear of 3011 Ordway St., NW closest to neighboring properties on 30th St. NW. Because both the ANC and OP were not given the opportunity to review and consider the final plans that included significant and substantial variations from the original plans lodged with these bodies, it is not appropriate to give great weight to their conclusions.
- (3) Due to an incomplete and/or erroneous understanding of the facts in this application, the BZA has not addressed the important issue of timing and sequencing that also affects the legitimacy of letters from neighbors, some of which date to several months before the completion and filing of final plans for the proposed addition. The only letters and submissions from neighbors that demonstrate a detailed and accurate understanding of the proposed addition were submitted by 30th St., NW property owners (3012, 3014 and 3016), were dismissed without comment or analysis in the BZA Order.
- (4) The BZA has waived the requirement for a 20 foot rear yard minimum exception and yet demonstrates a mind-boggling erroneous understanding of the facts in making its conclusion of law that "neighbors to the north of the adjacent alley also will not be, unduly impacted in the use of enjoyment of their homes due to the provisions of the

required rear yard and the 15 foot-wide public alley.” In fact, the BZA has earlier in the same Order noted that they are not requiring the Applicants to meet the minimum rear yard requirement. Furthermore, the alley is 9.5 feet wide and not 15 feet as claimed.

As mentioned at the outset, neighbors living on 30th St., NW (at 3512, 3514 and 3516 respectively) have made efforts to submit letters, related evidence and exhibits into the record demonstrating the adverse impact of the proposed addition on privacy and enjoyment of property.

The BZA, however, has given no weight to the significant issues raised by 30th Street NW neighbors and erroneously and egregiously have favored the Applicant in adoption of selective conclusions of fact and law allowing the exception in full and unconditionally. The BZA has erroneously failed to require retention or replacement of green-space for the protection of neighboring property owners privacy and enjoyment of their homes as a condition of the exception, or to even require an environmental assessment prior to approval of the exception.

Attached are two additional letters of 30th St. neighbors (3518 and 3520) underscoring the seriousness of common concerns already raised by property owners at 3512, 3514 and 3516 30th Street NW.

V. Request for Relief

Based on the foregoing, we respectfully request that the BZA provide the following relief:

- (1) Reopening of the record to both Parties and Non-Parties to allow greater transparency of information about the final plans of Applicants which were not contemporaneously made available by Applicants to neighbors, the Office of Planning, the ANC and/or the Historic Preservation Board;
- (2) Timely scheduling of a new Hearing for participation of substantially affected neighbors on 30th St. NW; and,
- (3) Proper and complete analysis of the full impacts on neighboring properties including but not limited to :
 - (a) full environmental assessment
 - (b) assessment effect of planned tree removal for impact on the environment and on noise that would affect the privacy and enjoyment of surrounding properties,
 - (c) assessment of the impact of relevant topography on privacy and enjoyment of property when combined with the lack of a 20 foot minimum rear yard and the 9.5 foot alley, and,
 - (d) assessment of the combination of all of these factors with potential adverse impact on privacy and enjoyment of property.

Mr. Celestino Toribio
3518 30th St., NW
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202-244-8790

May 2, 2012

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:

I hereby state my opposition to the request for a special exception to enable construction of an addition to the Thornell's home.

As of this date, I have not signed any document (to my knowledge) any request for an exception to indicate my support for the Thornell's request. After reviewing the submission of Susan K. Finston, I have a greater understanding of the degree of expansion that will be involved in this project and how it will affect the peaceful enjoyment of my property (as I am retired) causing me to lose privacy and bring additional unwanted traffic to the neighborhood which has risen tenfold since I purchased my home in 1972.

I 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.

As I have stated, my home located at 3518 30th St, NW, would most definitely be affected in addition to the Finstons' in terms of loss of enjoyment to my property, as well as additional traffic, congestion and noise from a home/deck that would become that much closer to the rear alley directly behind our homes on 30th Street, NW.

The Thornell's project, as I 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.

I thank you for your consideration,



Mr. Celestino Toribio

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

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

Mr. Moy:

I am opposed to the request for a special exception for the Thornell's proposed expansion. I agree with all the conclusions submitted earlier by Susan Finston, and I have two additional concerns.

1. Drainage:

My back yard is at the lowest elevation in this block of 30th Street. Whenever there is heavy rain, it runs downhill into my yard and it floods. This proposal includes the removal of several large mature trees on a steep slope at the top of the alley. An average tree 14" in diameter can absorb up to 900 gallons of water* at a time. Their removal will dramatically increase the amount of water running down the hill and filling my yard. The proposal further exacerbates the problem by replacing a large portion of the absorbent surfaces on the site with hardscaping.

2. The view from the street:

Currently, from 30th Street looking toward the alley, the view is of a woodsy area on a hillside. As I understand the proposed changes, this pleasant view would be substantially replaced by a view of the underside of a large deck with far fewer trees and no undergrowth. Since the resulting construction would be clearly visible from the street, the change would certainly affect the visual character of our block for the worse, and could potentially lower our property values.

Thank you for your consideration of these issues.



Lise Gladstone

* from the CSU/Denver County Extension Master Gardener 2010 website: <http://www.coopext.colostate.edu/4dmg/Trees/caring.htm#3.%20%20%20%20%20%20%20%20%20%20Tree%20Watering:%20Amount%20of%20water%20needed%20and%20methods%20to%20use>.