

**MEMORANDUM**

2012 JAN 10 PM 4:03

TO: District of Columbia Board of Zoning Adjustment**FROM:** Arthur Jackson, Case Manager

Joel Lawson, Associate Director Development Review

DATE: January 10, 2012**SUBJECT:** BZA Case 18296 – 3825 Morrison Street NW**I. SUMMARY RECOMMENDATION**

The Office of Planning (OP) **recommends approval** of the special exception relief requested pursuant to § 223 for the constructed concrete deck and storage building to reduce the rear yard setback required under § 404.1 from 20 feet to less than 1 foot on the subject property, subject to the submission to the record by the applicant of a landscape plan that addresses the concerns of the neighboring property owners.

II. AREA AND SITE DESCRIPTION

Address:	3825 Morrison Street NW
Legal Description:	Square 1859 Lot 0062
Ward:	3C
Lot Characteristics:	The subject rectangular corner lot is located in the northeast corner of the intersection of 39 th Street with Morrison Street NW, and is 6,300 square feet (0.14 acre) in size.
Existing Development:	According to the application the existing two-story one-family detached dwelling was built in 1914. A new concrete deck, parking/storage building and kitchen addition was constructed in 2010. The driveway that extends from an existing curb cut along 39 th Street was also widened to nearly 20-feet wide to service the garage doors on the addition. The curb cut itself was unchanged (refer to picture of the driveway and deck prior to the new construction in Figure 1). The property has a number of mature trees, and the northern and eastern boundaries are bordered by a wooden picket fence seven-foot tall (refer to Exhibit 1).
Zoning:	R-2 – single-family detached dwellings are allowed as matter-of-right in this district.
Historic District:	None
Adjacent Properties:	One and two-story one-family detached dwellings with a variety of designs.
Surrounding Neighborhood Character:	Moderate-scale residential uses.

BOARD OF ZONING ADJUSTMENT

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18296
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III. PROJECT DESCRIPTION IN BRIEF

Applicant	Daniel T. Merlis, the owner of record
Proposal:	The application explained that a building permit was approved by the DC Department of Consumer and Regulatory Affairs (DCRA) to construct a rear addition and deck to replace an existing larger wooden deck in the same location on the subject property. Construction of this addition reduced that rear yard setback between the dwelling and the northern property boundary from 21.8 feet to 0.91 feet.¹ Later a second building permit was issued on June 30, 2010 for construction of a smaller version of the original addition. On August 9, 2010, DCRA revoked the referenced building permit because the addition encroached into the minimum rear yard of 20 feet required by § 404 of the Zoning Regulations. This was because the new deck is more than four feet above grade and the Zoning Administrator was unable to confirm that the previous deck predated the current Zoning Regulations. After efforts to resolve this issue, DCRA issued another building permit to allow the applicant "to complete construction on the replacement kitchen addition." The Zoning Administrator subsequently determined that the previous deck was not grandfathered and that the new addition required zoning relief to remain within the required rear yard setback.
Relief Sought:	§223 – for encroaching into the required rear yard setback

IV. ZONING REQUIREMENTS and REQUESTED RELIEF

R-2 District	Regulation	Existing & Proposed	Relief:
Rear Yard (ft.) § 404	20 feet min.	0.9 foot ¹	- 19.1 feet
Lot Occupancy § 403	40%	30% ¹	None required

V. OP ANALYSIS:

Consistency with § 233

223 ZONING RELIEF FOR ADDITIONS TO ONE-FAMILY DWELLINGS OR FLATS (R-1) AND FOR NEW OR ENLARGED ACCESSORY STRUCTURES

223.1 *An addition to a one-family dwelling or flat, in those Residence districts where a flat is permitted, or a new or enlarged accessory structure on the same lot as a one-family dwelling or flat, shall be permitted even though the addition or accessory structure does not comply with all of the requirements of §§ 401, 403, 404, 405, 406, and 2001.3 shall be permitted as a special exception if approved by the Board of Zoning Adjustment under § 3104, subject to the provisions of this section.*

Single-family detached dwellings are allowed as a matter of right in this zone district. The applicant is requesting special exception relief pursuant to § 223 from the minimum rear yard required under § 404.

223.2 *The addition or accessory structure shall not have a substantially adverse affect on the use or enjoyment of any abutting or adjacent dwelling or property, in particular:*

¹ Reflects OP calculations based on the submitted annotated plat.

- (a) *The light and air available to neighboring properties shall not be unduly affected;*

While the addition is higher above grade than the previous deck, it does not appear that there will be undue impacts on the air and light available to neighboring properties.

Figure 1

- (b) *The privacy of use and enjoyment of neighboring properties shall not be unduly compromised;*

The applicant took steps to retain the privacy of the immediate neighbor to the north. The seven-foot tall wooden fence along the shared boundary was retained. Tall flowering Canna Lilies and clumps of fast-growing bamboo trees were planted between the shared boundary and the new construction in order to grow a natural screen (in response to the neighbor's complaints those trees were removed). The applicant also offered to erect another seven-foot tall solid privacy screen along the edge of the deck facing that boundary.



The neighbors have requested the applicant instead take other measures to screen their properties (refer to the Community Comments section below). The applicant noted that preliminary landscape drawings were provided to the neighbors for the purposes of discussion on September 28, 2011. Due to a lack of response from the neighbors, a landscape plan was never finalized.

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

The addition is not visible from Morrison Street but is visible from 39th Street NW. The concrete finish and muted colors of the addition are not out of character with the stucco exterior finish of the existing dwelling. As such, the addition and dwelling do not substantially visually intrude on the character and scale of the 39th Street frontage.

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

Sufficient graphical information was provided for this case.

- 223.3 *The lot occupancy of all new and existing structures on the lot shall not exceed fifty percent (50%) in the R-1 and R-2 Districts or seventy percent (70%) in the R-3, R-4, and R-5 Districts.*

The lot occupancy information in the submitted zoning computation is inconsistent with OP calculations based on the annotated plat of the site. However, lot occupancy of 30% or 40% is allowed in the R-2 district as a matter of right. Accordingly, lot occupancy relief is not required in this case.

223.4 *The Board may require special treatment in the way of design, screening, exterior or interior lighting, building materials, or other features for the protection of adjacent and nearby properties.*

OP recommended that the applicant continue working with the neighboring property owners to address their concerns (refer to the Community Comments section below), and that submission of the landscape plan become a condition of special exception approval.

223.5 *This section may not be used to permit the introduction or expansion of a nonconforming use as a special exception.*

Approval of this request would not result in the introduction or expansion of a nonconforming use on the subject property.

Based on this review, OP determined that this application generally meets the standards for special exception approval by the Board of Zoning Adjustment.

VI. AGENCY COMMENTS

The District Department of Transportation expressed no concerns about this project.

VII. COMMUNITY COMMENTS

In separate submissions to the case file both dated January 17, 2012, neighbors Peter and Ann Kolker who reside at 5524 39th Street NW, and Stuart and Robin Mile-McLean who reside on the abutting property to the north at 5525 39th Street NW detailed concerns that:

- previously there was no storage on the property;
- trees and foliage were removed for the new structure;
- the wooden deck was not visible from 39th Street while the new concrete structure is;
- the bright surface of the wider, impervious parking area; and
- the proposed construction of a seven-foot tall (privacy) fence atop the deck.

The Miles-McLean submission also expressed concern about the proximity of the new construction is to their property boundary and additional water run-off from the impervious driveway. Both neighbors expressed opposition to granting this special exception *unless* the granting is contingent on modifications to the driveway and deck area that reflect the above-referenced drawings.

After consideration at the November 14 and December 12, 2011 meetings, Advisory Neighborhood Commission (ANC) 3G voted unanimously (7-0) to *oppose* approval of this special exception *unless* the applicant completes certain landscaping in accordance with the drawings shared with the neighbors.

Another neighbor expressed the opposite view. Michael and Jennifer Levy, who reside directly opposite the subject property at 5517 39th Street, stated in a letter to the Board of Adjustment dated January 2, 2012, that many corner properties in the neighborhood without access to an public alley have garages and parking areas that face the street. It stated that the subject property *is* in character with the neighborhood and that the new driveway and deck are a significant improvement over what was there before. These neighbors support unconditional approval of this special exception application.



CP1000-1030

Feet



0 20 40



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Government of the District of Columbia
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