

Report of ANC 3 / 4 G

December 21, 2011

Board of Zoning Adjustment
for the District of Columbia

441 4th Street, N.W.
Suite 210 S
Washington, D.C. 20001

BOARD OF ZONING ADJUSTMENT
District of Columbia

CASE NO. 18296
EXHIBIT NO. 49

Re: BZA Application 18296

This is the report of ANC 3 / 4 G regarding BZA Application 18296, an Application of Daniel T. Merlis and Deany Laliotis for a Special Exception to the Zoning Regulations pursuant to 11 DCMR 3104.1 (2011) to construct a concrete deck in place of an existing wood deck in the rear yard of 3825 Morrison Street, N.W. (Square 1859, Lot 62) with an additional underground parking space.

ANC 3 / 4 G, at its regularly scheduled public meeting, December 12, 2011, by a vote of 5 to 2 (a quorum being four) opposed the granting of the Special Exception, unless the landscaping and other changes described in drawings by Barbara Balman, Landscape Design, dated September 6, 2011, are required as conditions of approval. A copy of these drawings is enclosed with this report.

Notice of the ANC's meeting was provided on the ANC's website, in the Northwest Current, and via the Chevy Chase Listserv. The meeting was attended by approximately 55 people.

This project has a long and tangled history, making it difficult to determine what was at issue in the Zoning Administrator's permit decisions and why permits were first issued and then revoked. In an effort to untangle the issues and reach an agreement acceptable to all the parties, the ANC listened to presentations from the interested parties at two regularly scheduled meetings, on November 14 and December 12, 2011. Four of the ANC's seven commissioners visited the site and met with the owners and two of the neighbors who oppose the application. The Commissioners had an opportunity to view the deck and other elements of the applicants' project from the applicants' and the neighbors' properties.

The facts as best we can ascertain them are that a permit (Permit No. B1001551) was issued on December 15, 2009 to "replace existing rear addition, replace existing deck with concrete terrace with max height of 3'7 5/8", repoint/repair existing driveway and repair/repoint existing private sidewalk." Subsequently, several "Stop Work" orders were issued. A second permit was granted in the summer of 2010; another Stop Work order was issued shortly thereafter; and the Zoning Administrator then began a review of the second permit. Construction on the deck was substantially completed by this time, because the Zoning Administrator had approved of the plans and issued a permit for construction months earlier.

After several months of review, the Zoning Administrator issued a Notice to Revoke the Permit on December 1, 2010. The revocation was based on a determination that the replacement deck was a non-conforming structure in the rear yard that intruded on the 20-foot setback required in an R-2 district under 11 DCMR 404.1 (There is some doubt in our minds as to whether the yard should be considered a rear yard, and whether the structure should be considered a garage, which would make it exempt from the 20-foot rear yard setback requirement. Because the Merlis/Laliotis house is situated on a corner lot, the rear yard of the property faces 39th Street and abuts the side yard of 5525 39th Street, N.W.)

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According to the applicants, the Zoning Administrator found that there was no record of a permit for the previous deck, and no indication that it was present prior to the adoption of the zoning regulations in 1958, and therefore the preexisting deck did not create a “grandfather” right. He also concluded that the addition did not qualify under the exception found in 11 DCMR 2503.2 for structures less than 4 feet above grade, nor was the addition legally non-conforming under 11 DCMR 404.4.

The December 1st letter advised the applicants that DCRA would pursue enforcement action if they did not apply for a variance from the BZA within 60 days. They did not do so. Thus, on August 1, 2011, DCRA sent a letter to the applicants noting that they had not submitted an application for a variance and had not otherwise corrected the violation. Accordingly, DCRA ordered the applicants to remove or alter the structure so that it complies with 11 DCMR 2503.1 and 11 DCMR 404.1.

During all of this time, several neighbors, including the Miles-McLean family, whose property at 5525 39th Street, N.W abuts the rear yard and deck of the applicants' property, had filed numerous complaints with the city. The Miles-McLeans were initially concerned with the scale of the construction and its impact on their property, given that excavation and construction were occurring at their property line, and on several occasions, they maintain that work was performed without proper permits. A particular concern of theirs was the impact on a 100-year old tree in their backyard, whose roots may have been affected by the construction. They also maintained that the height of the new structure affected their privacy. Neighbors across the street complained about the visual impact of the deck and storage structure, agreeing with the Miles-McLeans that the height and size of the structure have an adverse effect on neighboring properties.

On August 29, 2011, the applicants filed for a Special Exception, bringing the matter to the BZA's and our attention. In our consideration of this matter, there were two lines of thought: 1) Does the application meet the standards of 11 DCMR 223.2 concerning adverse effects on the use and enjoyment of adjacent properties? and 2) If we were unable to agree on question 1, is there a compromise that might address the concerns of the neighbors without requiring the applicants to undertake the expense of removing the deck, as they were ordered to do by DCRA?

The question of whether the new deck has a “substantially adverse effect” on the neighboring properties has three relevant subsections: a) the light and air available to neighboring properties shall not be unduly affected; b) the privacy of use and enjoyment of neighboring properties shall not be unduly compromised; and 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.

There is no issue with regard to subsection a): the structure does not block light or interfere with air flow to any adjacent structure. Subsections b) and c) are not as easily decided. Clearly, compared with the former deck and storage structure, the concrete deck (at least in its current condition) is more intrusive, and three of the most immediate neighbors have objected to it. (Fifteen other neighbors, almost all of them further from the property and with no view of the structure, signed a statement that they had no objection.) Thus, the ANC proceeded to Question 2.

Considering the second question, it was the view of the ANC majority that there is a compromise that might address the concerns of the neighbors without requiring the applicants to undertake the expense of removing the deck, as they were ordered to do by DCRA. Despite bad feelings on both sides, there have been sporadic negotiations between the parties. The applicants hired a landscape designer, Barbara Balman, to provide sketches of plantings and modifications that might provide the basis of a compromise. The designs, dated September 6, 2011, which are enclosed with this report, show a narrowing of the driveway, cobblestone edges, shrubs, two evergreen or flowering trees, and a trellis over the entrance to the storage area

(presumably masking the view of the deck from the street). The opposing neighbors have accepted these modifications in principle. The ANC majority also believes that something equivalent to these drawings would address any objection based on visual intrusion.

For the above reasons, we oppose the granting of a Special Exception unless the steps described in these drawings are included as conditions of approval. It is our intent that if the steps described in these drawings are included as conditions of approval, then the Special Exception should be issued, such that (assuming the landscaping work is in fact completed) the Merlis family will *not* need to demolish or alter the structure as built.

Requiring such conditions would be consistent with 11 DCMR 223.4, which states: "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".

ANC 3 / 4G appoints Commissioner Jim McCarthy to represent this ANC at any and all hearings related to this application for a Special Exception.