

18296

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February 2, 2012

By Hand Delivery

The District of Columbia
Board of Zoning Adjustment
441 Fourth Street, Suite 200
Washington, D.C. 20001

BOARD OF ZONING ADJUSTMENT
District of Columbia

CASE NO. 18296
EXHIBIT NO. 55

Re: Application of Daniel Merlis & Deany Laliots
3825 Morrison Street, N.W. (Square 1859, Lot 62)
CLOSING STATEMENT OF COMPLIANCE WITH BURDEN OF PROOF

Dear Board Members:

Daniel T. Merlis and Deany Laliotis (the "Homeowners"), owners of the property and improvements at 3825 Morrison Street, N.W., Square 1859, Lot 62 ("Property"), hereby request special exception approval pursuant to Section 223 of the District of Columbia Zoning Regulations ("Zoning Regulations") to allow the completion of concrete deck with below grade parking and storage space in replacement of a pre-existing wood deck at the rear of an existing one-family dwelling ("Home") on the Property. The Homeowners meet the standards for special exception relief as described below.

A. Preliminary Background.

The Applicant submitted two sets of materials in support of his Application; filed August 24, 2011 and January 9, 2012. The BZA held a hearing on January 17, 2012 to review the evidence in support of the requested relief. At the hearing, the Applicant presented evidence in support of his request, which included, among other things, testimony of three neighbor witnesses¹ and an expert zoning witness, former Zoning Administrator Toye Bello.² The Board

¹ The oral testimony presented included one neighbor within the 200 foot radius and two other long-term neighbors who live just outside the radius, one of whom is a real estate developer in the Washington business community. All three witnesses expressed support for the project, commended the esthetics of the project and noted the appearance was consistent with the neighborhood character. The Applicant also submitted letters of support from seventeen additional neighbors. These letters of support expressed approval of the project and the application, acknowledgement that the project was esthetically consistent with the neighborhood character, and remarked on the community support for the Applicant.

Two letters of support were submitted by the Applicants' two next-door neighbors, C. Gertz and N. Durrell who reside at Morrison Street, respectively.

² Mr. Bello dispelled several assertions expressed by the party/opponent and their witness, Mr. Bell that suggested the project failed to meet the criteria of the either the statute or the building plans approved by the DCRA. He noted that Zoning Regulations definition for "building area" does not include subterranean, below grade portion

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also heard testimony from three neighbors in opposition who obtained party status. The ANC Report, the ANC Dissenting Opinion of two Commissioners, and the Office of Planning Report all recommended approval of the Application. The ANC recommended approval, however, the approval was contingent on implementing a landscape plan.

The Board adjourned the hearing mid-stream and advised the parties to mediate the three neighbors' concerns about landscaping the project site. Though mediation was unsuccessful, the Chair again adjourned the hearing and advised the Applicant to mediate the concerns of the three neighbor party opponents and devise a landscape plan. Thereafter, the Applicant engaged a landscape architect to meet with the three neighbor group and devise a plan. The parties then met repeatedly, modified the proposed landscape plans and developed one complete and final landscape plan. The new plan is attached herein as Exhibit 1.

B. Legal Background.

The subject Home was built in 1914 and located in an R-2 Zoning District. It occupies a corner lot, bounded on the side by Morrison Street and on the side by 39th Street. As a corner lot, the home has street footage on both streets.

In 2009, the Homeowners embarked on the alteration and repair of the existing building including the reconfiguration and improvement of the structural integrity of an existing kitchen, and replacement of an existing wood deck located within the required rear yard, with a concrete deck. The proposed and permitted work including also excavation to create below grade space devoted to the dual function of parking and storage space.

On December 15, 2009, the Homeowners received Building Permit No. **B1001551**. The permit approved construction of the replacement rear addition and deck. On June 30, 2010, the Homeowners received Building Permit No. **B1007414**; which authorized construction of a smaller version of the replacement rear addition and deck—*i.e.*, 10' x 18', 8" instead of 12' x 20'. However, on August 9, 2010, the Department of Consumer and Regulatory Affairs ("DCRA") issued a Notice to Revoke Building Permit No. B1007414; specifying the new addition encroached into the minimum rear yard requirement in violation of 11 DCMR § 2503.1. The Homeowners worked in good faith with DCRA and the Zoning Administrator to resolve the issues, and on October 27, 2010, obtained Building Permit No. **B1100395**, to complete

of the home, which here includes the storage and garage area. 11 DCMR § 199 (2011). He reminded the Board the first floor below the grade is not counted in lot occupancy as well. *Id.*, He also noted that the Applicant was required to place temporary railings on the deck (pursuant to the Construction Code) and the railings is not considered – should not be used in the calculation of 4ft height pursuant to Section 2503.2, as suggested by the party/opponent witness, Robert Bell.

construction on the replacement of kitchen addition. The instant Application is limited to whether the replacement concrete deck/addition is a modernization and repair of the pre-existing deck that is grandfathered, and therefore exempted from the “rear yard” requirements outlined in 11 DCMR § 2503.2³.

Later, at the end of the year, more than one year after the first permit was issued to the Applicant and after significant work had been completed on the project, the Zoning Administrator determined that the concrete deck replacement addition violated the minimum rear yard requirement because part of the structure is more than 4 feet above grade in violation of Zoning Regulations. The ZA noted, in a December 1, 2010 letter, that “there is a lack of evidence⁴ for me to conclude either that the [pre-existing wooden] deck existed on May 12, 1958 or that it was more than 4 feet above grade.” *Id.*, Letter of M. LeGrant, Zoning Administrator.

C. The Application Satisfies the Special Exception Requirements of Sections 3014.1 and 223.

With regard to the Section 223.2 criteria, the Applicant provided sufficient evidence to meet his burden. The record reveals the 5525 Neighbor (next door that shares the property line) home is at least 27 feet away from the Applicant’s deck/addition. Further, the difference in line of sight between the earlier deck and new addition is a small window of less than two feet. The

³ The scope of the Application before the BZA is limited to the deck/addition. D.C. Official Code § 6-641.07 (2008). Where the Applicant complied with the requirements of 223 and 3104.1 of the Zoning Regulations, the Board ordinarily must grant the application. *Stewart v. District of Columbia Board of Zoning Adjustment*, 305 A.2d 516, 518 (D.C. 1973); *Washington Ethical Society v. District of Columbia Board of Zoning Adjustment*, 421 A.2d 14, 18-19 (D.C. 1980); *First Baptist Church of Washington v. District of Columbia Board of Zoning Adjustment*, 432 A.2d 695, 698 (D.C. 1981); *Gladden v. District of Columbia Board of Zoning Adjustment*, 659 A.2d 249, 255 (D.C. 1995).

⁴ There is no additional reference to the type or amount of evidence Mr. LeGrant considered in his determination and there is no other information describing the inaccuracy of the evidence in which he reviewed and considered. The ZA did not dispute that a wood deck pre-existed the addition; he could not reasonably make such a conclusion given the ample evidence of the wooden deck submitted into the record by the Applicant, and sufficient amount of evidence which appears in public domain. The pre-existing wooden deck occupied a larger portion of the rear yard than now is occupied by the concrete deck, and further that such deck was more than four feet (4 ft.) above adjacent finished grade at any point.

light and air available to neighboring properties is not unduly affected, as opined by the Office of Planning. The 5520 and 5524 Neighbors, across 39th Street, the record reveals their homes are more than 40 feet away from the Applicant's deck. These two neighbors share the same view as Ms. Gertz, a next door neighbor who has a home that occupies the corner lot across 39th Street, and who testified for the Applicant in favor of the application. As to the privacy of use and enjoyment of neighboring properties and whether it is unduly compromised, the Applicant asserted the 5525 Neighbor was not adversely impacted by the use of wooden screen – an additional wooden fence arising from the deck meets the standard. The neighbor argued for different screening but acknowledged screening would meet their needs. Further, the Applicant produced abundant evidence that the character of the neighborhood was not adversely impacted by the project.

For these reasons, and as represented in photographs included with this Application, the addition does not have a substantially adverse affect on the use or enjoyment of any abutting or adjacent dwelling or property. More than seventeen neighbors of both the Applicant and the three neighbor opposition group expressed support for the project and noted the replacement addition is a beautiful addition. The record illustrates the project does not substantially impact the Applicant's neighbors in an adverse manner.

D. The Modified Landscape Plan Approved by the Opposition Neighbors.

Moreover, the Applicant has submitted a workable and revised Landscape Plan that meets the Board's directive and incorporates the concerns of the opposition. It is attached herein as Exhibit 1 and incorporated in the instant submission. The Applicant has agreed to add shrubbery, trees and a new fence on the property lot line to add a screening for the 5525 Neighbor. The Landscape Architect will work with the Applicant and neighbors to ensure the plan will be implemented. The three neighbor group has agreed to this plan and filed its own submission regarding same. The specifics of the Plan include narrowing the concrete driveway; adding plantings along the driveway perimeter and the erection of a pergola at the op of the public space area.

E. Additional Relief Requested.

The Applicant recognizes the Plan requires additional permitting from the DCRA and the need for approval by the Zoning Administrator. The Applicant also recognizes the Board will issue an oral decision which will later be followed by a written decision. In anticipation of the time lapse between the oral decision and the subsequent written decision, the Applicant had hoped to bring to implement the Plan. In an effort to expedite the process, the Applicant requests the Board use its authority to allow the Applicant to begin to execute the Landscape

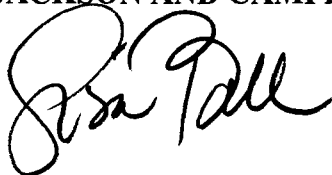
Plan and obtain permits as soon as practicable. To the extent, the Applicant requires the approval of the Zoning Administrator; it seeks authority to obtain the permitting, inspection and other related matters to complete the Plan.

F. Conclusion

The Applicant's written statement, and through testimony and evidence presented at the public hearing, demonstrate the Applicant has met its burden of proof to obtain the Board's approval of the requested relief. Further, the Applicant has provided a Landscape Plan which meets the approval of its neighbors in opposition. The Applicant respectfully request that the Board approve the special exception application and grant the requested relief.

Sincerely,

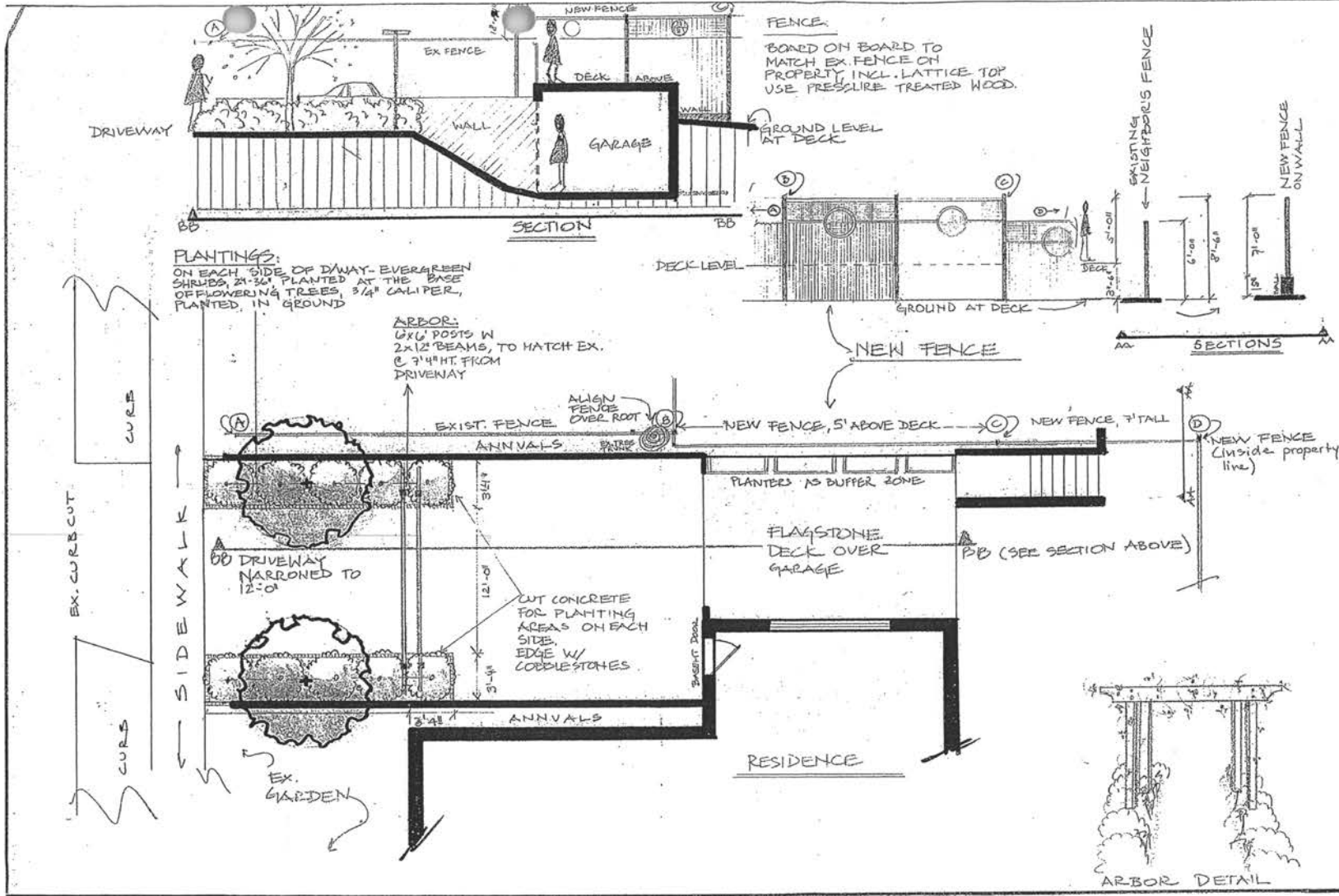
JACKSON AND CAMPBELL, P.C.

A handwritten signature in black ink, appearing to read "Lisa Bell", written in a cursive style.

By, Lisa A. Bell

EXHIBIT A

Landscape Plan



MERLIS RESIDENCE

3825 MORRISON STREET N.W.

Washington D.C. 20015

DRIVEWAY PLAN AND SECTION

1 2 4 8 16
SCALE: 1/4" = 1'-0"

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