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MEMORANDUM

TO: District of Columbia Board of Zoning Adjustment

FROM:  Arthur Jackson, Case Manager
Joel Lawson, Associate Director Development Review

DATE: December 10, 2013

SUBJECT: **BZA Case 18654** – Expedited review requested pursuant to § 3118 for special exception relief in accordance with § 223 for deck additions to a two-story flat at 4008 3rd Street NW

I. SUMMARY RECOMMENDATION

The Office of Planning (OP) **recommends special exception approval** in accordance with § 223 from

- § 403 2 (60% lot occupancy is allowed on a row dwelling lot, a maximum 70% is allowed under this provision),
- § 404 1 (a minimum rear yard setback of 20 feet is required, the additional deck would set back approximately 6 5 feet), and
- § 2001 3 (b) (2) (because this proposal would increase the nonconforming lot occupancy and create a new nonconformity)

The one condition of approval would be to retain the rear yard parking pad with a minimum vertical clearance above the pad of 6-feet 6-inches for the additional deck, in accordance with § 2115.5

The application requested lot occupancy relief to 66% for reconstruction of the existing rear deck. However, the Zoning Administrator (ZA) confirmed that the additional deck also requires lot occupancy and rear yard setback relief which would result in approximate lot occupancy of 74% which requires variance relief. As the applicant did not request variance relief, OP only supports lot occupancy relief to the 70% allowed under this special exception provision which would require a smaller deck.

II. AREA AND SITE DESCRIPTION

Address	4008 3 rd Street NW
Legal Description	Square 3313, Lot 0100
Ward	4C
Lot Characteristics	The subject 1,438 square-foot (0.03 acre) property fronts 3 rd Street NW and a public alley 10-15 feet wide along its western (side) and northern (rear) boundaries. The lot slopes down from 3 rd Street toward the rear boundary.
Existing Development	A two-story row dwelling and flat of frame construction that sets 4 8 feet back from the 3 rd Street right-of-way. The combination of a first floor elevation higher than the adjacent street and a property slope allow for a walk-out basement (refer to Figure 1). A 5 x 8-foot deck on the rear façade has stairs down into the rear yard. This deck elevation is 12 feet above the adjacent grade. The

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	parking pad in the rear yard is surrounded by a gated fence with direct access to the alley (refer to Figure 2) According to zoning computation attached to this self-certified application, the current lot occupancy is 66% which exceeds the maximum 60% allowed in the R-4 District on lots developed with row dwellings and flats
Zoning	R-4 – allows flats and row dwellings as a matter of right
Historic District	None
Adjacent Properties	Predominantly two-story row dwellings of similar construction
Surrounding Neighborhood Character	Moderate-scale residential (refer to Figure 2)

III. APPLICATION IN BRIEF

Applicants	Laura Hickman (owner of record) and Craig Hickman
Proposal	The proposed construction would replicate the existing first floor deck and stairs, then attach a new 12 x 15-foot deck. The elevation of the new deck would be 8 feet above the adjacent grade, 4-feet below the first floor, and the addition would extend to a point 6 feet 6 inches from the rear property boundary.
Relief Sought	§ 223 – special exception relief from the current zoning provisions for lot occupancy and an addition to a non-conforming structure The application indicated the additional deck would not count toward lot occupancy because its elevation would be below that of the main floor (as per Board of Zoning Adjustment Order No 15955). This application indicated that the proposed new construction would retain the current 66% lot occupancy. After its review, OP asked the ZA whether the additional deck would increase the nonconforming lot occupancy and require rear yard setback relief since it would encroach into the required rear setback of 20 feet. When the ZA confirmed that it would, OP notified the applicant.

IV. ZONING REQUIREMENTS

R-1-B District	Regulation	Existing	Proposed ¹	Relief:
Lot occupancy § 403	60%	66%	66% / 72%	+6% / 12%
Rear Yard (ft) § 404	20 ft min	24 feet	6 5 feet ²	- 13 5 feet

Section 2001.3 of the regulations also states

¹ The current 66% lot occupancy listed in the application reflects the existing deck and stairs, and excludes the proposed deck addition. OP based the 72% estimate on the submitted plans and the Zoning Administrator finding referenced above.

² OP estimate of the distance between the proposed deck and the rear boundary based on the submitted plat and plans.

§ 2001.3 *Enlargements or additions may be made to the structure; provided:*

- (a) *The structure shall conform to percentage of lot occupancy requirements, except as provided in § 2001.13; and*
- (b) *The addition or enlargement itself shall:*
 - (1) *Conform to use and structure requirements; and*
 - (2) ***Neither increase or extend any existing, nonconforming aspect of the structure; nor create any new nonconformity of structure and addition combined.***

Since the reconstruction and deck addition would increase the nonconforming lot occupancy and create a new nonconformity, relief is also required from this section.

The following OP analysis reflects the above-referenced ZA determination that the deck counts toward lot occupancy and rear yard. As the applicant only requested special exception relief, OP analysis is for a deck *not* exceeding the 70% lot occupancy allowed under § 223.

V. OFFICE OF PLANNING ANALYSIS

Special exception relief in accordance with § 223 from §§ 403.3, 404.1 and 2001.3 (a)

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.*

One-family row dwellings and flats are permitted uses in this zone district. The application requests special exception relief under § 223 from § 403 because the deck and stair construction would continue to be nonconforming for lot occupancy, § 404 because the new deck would encroach into the required rear yard of 20 feet, and from § 2001.3 (a) because the proposal would not conform the maximum allowable lot occupancy.

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:*

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

The proposed first floor deck replacement and lower deck addition would not impact the air and light available to the neighboring property.

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

Views from the proposed deck and stair construction toward the neighboring properties would not be substantially different from what current exists. As a result,

Figure 1



OP does not anticipate that the privacy of use and enjoyment of neighboring properties would be unduly compromised.

- (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 proposed addition, as viewed from the street, would not visually intrude upon the character, scale, and pattern of houses along the street frontage.

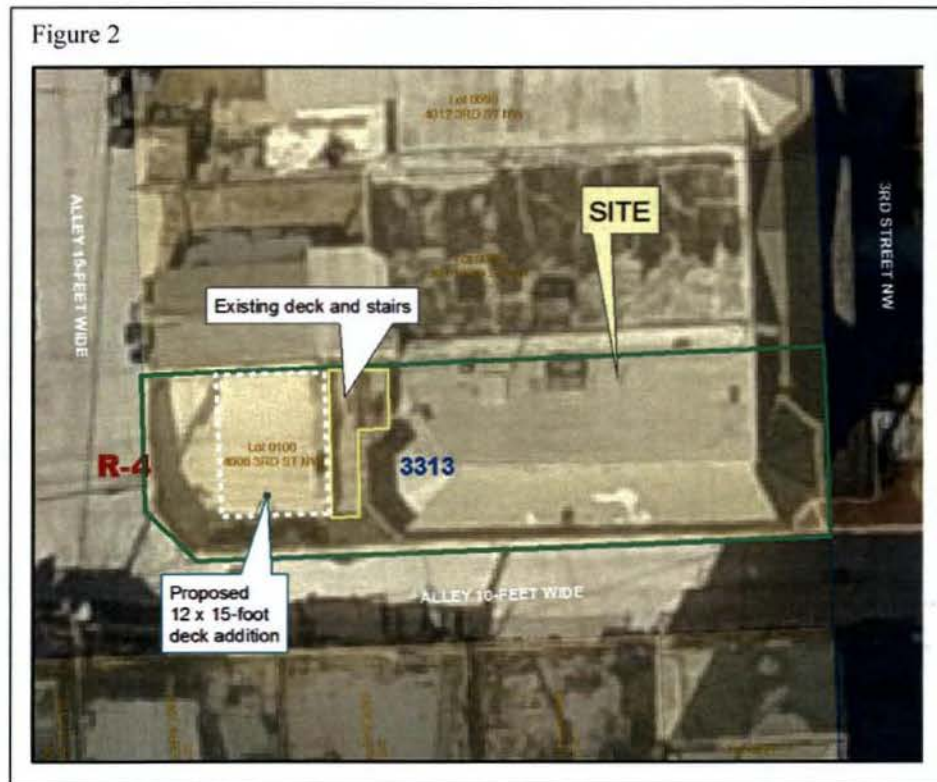
- (d) *In demonstrating compliance with paragraphs (a), (b) and (c) of this subsection, the applicant shall use graphical representations such as plans, photographs, or elevation and section drawings sufficient to represent the relationship of the proposed addition or accessory structure to adjacent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

Submitted plans and photographs were sufficient.

- 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.*

OP estimated, based on the submitted plans, that the 12 x 15-foot deck addition would increase the current 66% lot occupancy to 72%³. This would exceed the maximum 70% allowed under this provision. The applicant

Figure 2



has not provided an explanation of how the proposed deck would meet the variance tests. OP could support a slightly *smaller* deck addition that would be consistent with the 70% maximum allowed by special exception.

³ OP estimate based on the submitted plat, and deck and stair plans. It also appears that the new deck would occupy approximately 46% of the required rear yard, less than the 50% maximum stated in the § 199 “Yard” definition.

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*

No special treatment is recommended

223 5 *This section may not be used to permit the introduction or expansion of a nonconforming use as a special exception*

Granting this request would not introduce or expand a nonconforming use

Based on this analysis, the application meets the standards for special exception approval. However, to ensure the current onsite parking pad continue to be serviceable, OP suggests a condition of approval requiring the retention of existing rear yard parking pad with a minimum vertical clearance from the pad of 6-feet 6-inches to additional deck above in accordance with § 2115.5

VI. AGENCY REVIEW

The District Department of Transportation expressed no objection to the approval of this special exception in its September 17, 2013, memorandum

VII. COMMUNITY COMMENTS

This application was forwarded to Advisory Neighborhood Commission (ANC) 4C for review and comment. The applicant indicated that the ANC voted to support this application at its November 2013 meeting.