

Statement of satisfaction of burden of proof for special exception application.

Special Exception: § 223

§ 223.1

The applicants are requesting special exception relief under § 223 for the replacement of the existing first-floor rear deck and the addition of a lower rear deck 8 ft above ground and 4 ft below the first floor joists. The replacement of the first-floor rear deck will continue the existing non-conformities with regard to lot area and lot occupancy, which is 66% lot occupancy. If replacement of the rear deck is considered to increase an existing nonconformity, then relief under § 2001.3 would be necessary. Section 2001.3 relief is available because replacing the rear deck will not exceed the maximum lot occupancy for special exceptions. The rear yard will remain conforming: the rear yard measured from the house to the alley is 27 feet, and is reduced to 21 ft by the 6 foot wide first-floor rear deck. The addition of the lower deck and stairs will not increase any non-conforming aspects of the property because it is an open, unroofed sundeck constructed below the level of the first floor joists and thus, not counted in the building area for zoning purposes. See § 11-199 (definition of building area excludes "portions of a building that do not extend above the level of the main floor of the main building, if placed so as to not obstruct light and ventilation of the main building or of buildings on adjoining property."); BZA Order Application No. 15955 (1994), pg. 2 ([A] deck below the level of the main floor will not be included in the "building area.").

§ 223.2

The accessory structure is in harmony with the general purpose and intent of the Zoning Regulations, and will not have a substantially adverse effect on the use or enjoyment of any abutting or adjacent dwelling or property.

The light and air available to neighboring properties will not be unduly affected. The uncovered unroofed sundeck will not have any appreciable impact on the light or air available to neighboring properties. The neighboring property already has a 7 ft sleeping porch addition one foot wider than the proposed first-floor rear deck. Further, the property lot has east/west orientation so any shadows cast by the deck are not an issue for the neighboring properties.

The privacy of use and enjoyment of neighboring properties shall not be unduly compromised. All of the neighboring lots on the square have less than the minimum required 1800 sq ft., so the properties are all relatively close to the alleys and the alley network is visible from the rear windows of the properties on the square. There are no trees or other large vegetation in the rear yards; the area has a city character. The subject property has two stories with rear windows overlooking the alley and neighboring rear yards. Further, as mentioned, the neighboring property already has a 7 ft rear sleeping porch addition that is one foot wider than the proposed first-floor rear deck. In addition, there are several above-ground decks, as well as

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other sleeping porch additions along the subject alley network. The deck will not require additional lighting as the street lights provide sufficient light.

The accessory structure together with the original building, as viewed from the street, alley, and other public way, will not visually intrude upon the character, scale, and pattern of houses along the subject street frontage. The accessory structure would only be visible from the alley network and thus, would not impact the character, scale, and pattern of houses along the subject street frontage.

The applicants have provided plans and photographs showing the relationship of the accessory structure to adjacent buildings and views from the public ways.

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