

BOARD OF ZONING ADJUSTMENT
SPECIAL EXCEPTION and VARIANCE APPLICATION - § 223 and §199.1
PRE-HEARING STATEMENT

BZA Application No. 18798
Janet Katowitz (Applicant)
1425 North Carolina Avenue, NE; Square 1056, Lot 94

I. Introduction.

Janet Katowitz (the “Applicant”) is the owner and occupant of the property and improvements located at 1425 North Carolina Avenue, NE, Square 1056, Lot 94 (the “Property” or the “Subject Property”). The building on the Property is a one-family row dwelling (the “Building”). The Applicant is requesting special exception relief pursuant to 11 DCMR § 223 to construct a deck attached to the rear of the Building. The deck will be a two-tiered deck, only one tier of which is above four (4) feet in height.

Because the existing lot occupancy on the Property (62%) exceeds the maximum permitted lot occupancy of sixty percent (60%), and because the deck addition will extend the lot occupancy to seventy percent (70%), the Applicant is requesting the § 223 special exception relief from the requirements §2001.3 (which prohibits additions to structures which are currently nonconforming as to lot occupancy) and §403.2 (lot occupancy). The rear deck would also not comply with the minimum required rear yard setback of twenty (20) feet, so the § 223 relief is also requested from § 404.1 (rear yard).

II. Requested Amendment to the Application to Include Variance Relief from §199.1.

The Applicant is hereby requesting leave to amend the Application to include variance relief from the requirement that no structure shall occupy in excess of fifty percent (50%) of a yard required under the Zoning Regulations. The Applicant did not at first apply for such relief, based on the apparent published position of this Board that structures 4 feet or lower did not count against the 50% requirement. However, in later discussion with the Zoning Administrator, it was discovered that the Zoning Administrator does not agree with the methodology laid out in BZA Order No. 17285 calculating the fifty percent (50%) requirement, and would not follow such methodology in reviewing any building permit application. The Applicant therefore is requesting variance relief accordingly. The proposed construction has not changed, and the relief will amount to merely covering an existing portion of the rear yard currently graded on a slope

away from the house. The Applicant wishes to construct the 3'11" portion of the deck (the "Lower Deck") in order to provide (i) relief from the high lattice structure just 10 feet away on the other side of the alley, (ii) some protection from the narrow alley, (iii) a flat surface for recreation without having to re-grade the rear yard, potentially causing water damage to the house, and (iv) providing a coherent recreation space, rather than one involving a small deck with a very small rear yard. Neither the upper deck area nor the lower deck will have any negative impact on any adjacent neighbors. The immediate neighbor to the east is in support of the Application, as well as another near neighbor who also supports the proposed improvements. The house to the west has out-of-town owners and did not submit any objections. The two properties are separated by a fairly high fence and the proposed deck will not be seen from that property.

III. Description of the Property and the Proposed Addition.

The Property is located in the R-4 zone district. The Property is rectangular in shape and has a land area of 2,000 square feet. There is a 10-foot-wide alley at the rear of the Property. The current lot occupancy of the Property is 62%. The area is characterized by small, shallow lot sizes, and most of the nearby properties exceed 60% lot occupancy. See a map of the Property attached hereto as Exhibit A.

IV. The Application Satisfies Special Exception Requirements of Sections 3104.1 and 223.

A. Overview. Pursuant to Section 3104.1 of the Zoning Regulations, the Board is authorized to grant special exception relief where, in the judgment of the Board, the special exception will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps, and will not tend to affect adversely the use of neighboring property, subject also, in this case, to the specific requirements for relief under § 223 of the Zoning Regulations.

In reviewing applications for a special exception under the Zoning Regulations, the Board's discretion is limited to determining whether the proposed exception satisfies the relevant zoning requirements. If the prerequisites are satisfied, the Board ordinarily must grant the application. See, e.g., *Nat'l Cathedral Neighborhood Ass'n. v. D.C. Board of Zoning Adjustment*, 753 A.2d 984, 986 (D.C. 2000).

B. Requirements of Section 3104.1.

The granting of a special exception in this case “*will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to affect adversely, the use of neighboring property...*”. (11 DCMR § 3104.1.)

The proposed deck addition is a two-tiered deck. The higher tier is at the main level of the Building (a height of about 6’4”), and it will provide an egress from the rear door of the Building which currently does not exist. This higher tier extends a distance of only four feet from the Building, for most of its width, and extends a few feet further out in one section. The lower tier is at a height of only 3’11” and is a permitted structure in any required yard, pursuant to 11 DCMR § 2503, which is not included in the lot occupancy calculation. This addition is very modest in nature, has no impact on light and air of neighbors, nor does it materially impact the privacy of use or enjoyment of adjacent neighbors.

For this reason, the addition will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to affect adversely the use of neighboring property.

C. Requirements of Section 223.

The proposal in this application satisfies the requirements of Sections 223, as follows.

Section 223.2 “*The addition or accessory structure shall not have a substantially adverse affect on the use of 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:*
- (b) *The privacy of use and enjoyment of neighboring properties shall not 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*
- (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.”

The proposed addition will not have a substantially adverse effect on the use or enjoyment of neighboring properties. It will have no impact on neighboring light and air, as there are already boundary fences existing on either side of the Property. The proposed addition will likewise have no material impact on the privacy of neighboring properties.

Section 223.3 *“The lot occupancy of all new and existing structures on the lot shall not exceed seventy percent (70%) in the R-3 District...”*

The proposed lot occupancy is seventy percent (70%).

V. Variance Relief.

The Applicant is now requesting relief from the requirement within the definition of Yard pursuant to § 199.1 which requires that no structure occupy more than fifty percent (50%) of any required yard. The structures involved, including the existing house, the upper deck, and the lower deck, will occupy approximately 77% of the required rear yard

A. Unique Situation or Conditions Resulting in a Practical Difficulty. The Property is subject to certain extraordinary conditions that make compliance with the strict interpretation of the Zoning Regulations a practical difficulty. The subject lot is relatively shallow, as it is in a triangular-shaped square. The existing house, therefore, already occupies a portion of the required rear yard. In addition, the Building has three separate egresses existing at the rear, which requires that the upper deck extend the length of the house, but only about 4 feet out from the house. Because the amount of the upper deck is limited by the 70% limit as well as the amount of lot occupancy of the existing Building, the upper deck area is limited. The Applicant wishes to provide a lower deck, under the 4 foot limit, in order to provide a more coherent and protected recreation space that fits with the property.

The rear yard currently has a significant slope away from the Building. In order to use the remaining yard as recreation space, rather than the lower deck, the Applicant be need to re-grade the rear yard. This presents two practical difficulties, including the cost of re-grading the yard,

and the possibility of causing a situation where water would then drain back to the house. (See photos attached as Exhibit B.) In addition to this concern, if the Applicant were to keep the proposed structure within the 50% requirement, it would have a small lower deck and then a very small portion of a rear yard (as the rear yard is also occupied by an existing parking pad). So if the lower deck were smaller, it would result in a “remainder” yard of limited utility and attractiveness.

Finally, the Applicant’s rear yard is across a 10-foot alley from a 2-story lattice fence structure that towers over her rear yard recreation space. The elevated lower deck provides some relief from the impact of this 2-story fence, and also provides some demarcation and protection from the alley. (See photos attached as Exhibit B.)

B. No Substantial Detriment to the Public Good.

The Application is supported by two neighbors, and not opposed by any neighbors (See support letters attached at Exhibit C.) The Applicant has restored the Property and the Building over the past couple years, and the proposed work will be an attractive addition to that work. The increase of the space of the lower deck over the fifty percent (50%) will not have any impact on adjoining neighbors. ANC 6A’s Planning, Zoning, and Development Committee voted 5-0 to recommend approval of the special exception request, and 4-1 to recommend approval of the variance relief. The full ANC meeting is scheduled for July 10.

C. No Substantial Detriment to the Integrity of the Zoning Regulations.

The relief requested provides additional recreation space to the Applicant, while mitigating several unique conditions of the Property relating to the shallowness of the lot, the grading of the rear yard, the existence of the high fence to the rear, and the 3 exits currently without access to the rear of the Property. The confluence of conditions provide a unique situation not likely to be often repeated, thereby protecting the integrity of the Zoning Regulations.

VI. Conclusion.

For the reasons stated above, this application meets the requirements for special exception and variance approval by the Board, and the Applicant respectfully requests that the Board grant the requested relief.

Respectfully submitted,

A handwritten signature in dark ink, reading "Martin P. Sullivan". The signature is written in a cursive style with a large, stylized "M" and "S".

Martin P. Sullivan, Esq.
Sullivan & Barros, LLP