

BOARD OF ZONING ADJUSTMENT OF THE DISTRICT OF COLUMBIA

APPLICANT: LISA V. TERRY

Statement in Support of Party Status Request, Form 140

Party Status Criteria (Questions 1-6, Form 140)

I am the homeowner and resident of 3904 McKinley Street, N.W. I have lived at my home for 22 years. I am writing to express my strong objection to the application of Chris and Robyn Pashby (the Pashbys) to build a new two-story addition to their home, to construct a new 14.5 foot garage, and to add a parking pad in the backyard. I share a property line with the Pashbys and therefore am directly affected by their proposed plans. The proposed addition would have only a 4.9 foot side yard setback.

Specifically, the Pashbys are seeking a "Special Exception" to the applicable zoning regulations since their plans, as proposed, exceed the 40% lot occupancy requirements in the District of Columbia. Pursuant to such regulation, the applicant must show that the result "will not tend to affect adversely the use of neighboring property..." 11 DC,R 3104.1. For the reasons stated below, the Pashbys cannot meet this test.

I. Background

My lot and that of the Pashby's are situated as an L-shape, as best as I can describe. In other words, the property line running along the side of their home stretches along the back of mine. For that reason, every angle of the back of my house faces their backyard and home. As such, whatever they build, or tear down, is directly visible from, and directly affects the use and enjoyment of, my home. Significantly, the proposed plans would result in a *69 percent increase in lot occupancy* of the back of the lot (i.e., the backyard).

In 2014, I provided my consent to the Pashby's original construction plans, which did **not** include the construction of a new significantly larger garage with and underground cellar, which necessitates the cutting down of a beautiful mature, 30 foot holly tree which provides privacy and shade to my home, as well as that of my neighbors. Further, I provided my consent **before** the Pashbys learned of a computation error in calculating their lot coverage, which has now necessitated a new BZA Special Exception. Specifically, pursuant to regulation, and as the Pashbys concede, any side yard of less than 5 feet (as is the case here) must be included in the lot coverage calculation as if it was occupied by a structure. The public policy reason for that rule is clear: to protect the interests of homeowners who are affected by new construction on adjoining lots given the relatively small set back of an area less than 5 feet.

I learned of the Pashbys new plans only recently when they emailed me on October 11, notifying me of the computation error and telling me for the first time of their plans to tear down their existing garage (which is more accurately described as a shed) and build a new much larger one. Significantly, the Pashby's communication to me mentions nothing about cutting down the 30 foot tree. I only learned of this major development a few days ago from neighbors affected by the proposed plans, who also object to

the removal of the tree.

I refer you to the September 22, 2015 submission of the Pashby's architects, Thomas & Clark, to the Board of Zoning Adjustment (BZA) submission entitled "Statement Explaining how this application meets the specific test identified in the Zoning Regulations for Special Exception (Burden of Proof)". The assertions therein that, "the proposed expansion and garage are consistent with other additions along this block and presents no impediment to light or privacy on the neighboring structures" is, quite simply, **not true**. In fact, the opposite is true. Further, at the time this assertion was made, I had not been notified of the computation error, the new garage construction and parking pad, or the proposed removal of the tree. Thus, I question on what basis Thomas & Clark made this representation to the BZA.

Specifically, there is no comparable comparison on the block; and it *certainly* cannot be said that the "proposed expansion and garage are consistent with other additions on the block." All of the lots along the block are larger than the Pashby's or are configured differently. Significantly, as noted above, the Pashby's proposed expansion amounts to a **69 % increase of lot coverage (footprint) in their back yard**. The density is even greater because the house addition is two floors and the height of the proposed new garage is five feet higher than the existing garage. Further, the Pashbys would be cutting down every single tree in their yard to accommodate the new construction. All of these changes are magnified by the narrow nature of the Pashby's lot. The totality of these changes would be *very much* out of character with the surrounding lots and neighborhood, which is characterized by a *purposeful* balancing of building structures, mature trees and foliage, light and air.

A couple of lots on the block have garages that accommodate a car but those lots are larger than the Pashby's (such as the lot immediately to the south which is twice as large) or are configured differently. And none has a garage with a height of over 14 feet that the Pashbys are proposing. No lot has a car pad in the back yard. None of the additions on other lots on the block impede light and privacy the way the Pashby's would because the back of my home faces the side of their lot. Other additions have a lesser affect because they are to adjacent to other lots.

In short, the representation made to the BZA is false and the Pashbys cannot meet their burden of proof.

II. The Proposed New Structures Have A Substantially Adverse Affect on the Use and Enjoyment of My Home

The Pashby's proposed addition and garage construction is subject to the following provision of the DCR:

Section 223.2. The addition or accessory structure shall not have a substantially adverse affect on the use or enjoyment of any abutting or adjacent property, in particular,

- (a) The light and air available to the neighboring properties shall not be unduly affected; and
- (b) The privacy of use and enjoyment of neighboring properties shall not be unduly compromised.

The Pashby's proposed addition and garage construction fails to meet both of these tests.

Subsection (a) Regarding Light and Air:

The Pashby's proposed addition and garage construction unduly affects the light and air available to my home and lot. As described above, the back of my home faces the side of the Pashby's lot. The two story addition would directly impede existing open views from my kitchen, dining room, deck and patio, and second floor bedrooms, essentially creating walls where there is currently light and air. The construction of a new garage almost *6 feet higher* than the current garage would have the same negative effect, and is significantly exacerbated by the removal of a beautiful mature tree.

The effect of these additions is severely exacerbated by the fact that there is only a 4.9 foot setback; the homeowners who make up the group of 4 lots are already “on top of each other.” There is no other view, no other light or air available to us. As such, the imposing new 2 story addition which extends and additional 21 feet into the lot and oversized garage unduly affect my the light and air available to my property and that of my neighbors.

Subsection (b) Regarding Privacy and Enjoyment:

The Pashby's proposed renovation unduly compromises the privacy and use and enjoyment of my home. First the two story addition would require removal of a tree that currently provides privacy. Significantly, the addition includes nine windows in the back of the house which provide views directly into my back yard. The three windows on the upper floor would provide the most direct view onto my property; six windows on the first floor would diminish my privacy as well since they are placed above the height of the fence that separates us. Further, due to fence height restrictions in the District of Columbia, I would be unable to build a fence adequate to protect my privacy. There would be no tress to provide privacy to my home or enhance the use and enjoyment of my home; screening trees could provide some privacy but they would have to be mature, such as the 30 foot tree they are proposing to cut-down. In short, the violation of my privacy caused by a two story addition extending an additional 21 feet from the current structure and with a less than 5 foot set back cannot be cured.

Second, the garage construction requires the removal of a beautiful 30 foot holly tree which provides significant afternoon shade in my back yard and a scenic view from every room facing the back of my house in both the ground floor and second floor. Furthermore, the removal of the tree would provide direct views from two second floor bedrooms of my house into the backyard of the residents of 5524 39th street, who also oppose the proposed construction, thereby unduly compromising their privacy as well. Screening trees to enhance the view from my home would be no use in this instance as well for the following reason. The proposed new garage includes an underground cellar which is reached by a new stairwell which stretches 15 feet along the side of my property and is situated only *six inches* from my property line. Six inches! There plans leave *zero* room to plant screening trees to enhance the view of their property, leaving me with an unsightly 14.5 foot garage.

In sum, it is the totality of the Pashy's proposed additions that is so objectionable. The removal of a major 30 foot tree, a two story addition and the construction of a 14.5 foot garage would significantly alter the use and enjoyment of my home, which I have lived in for 22 years. This negative impact is exacerbated by the fact that Pashby's lot is a small one, transforming my scenic view and that of my neighbors into

one of building structures.

III. Proposed Removal of Mature Tree

I have discussed above the negative impact the proposed construction would have on my home, however, I feel the aspect of the removal of a mature 30 foot tree deserves special attention. At present, this tree is visible virtually from every corner of the back of my house--my dining room, kitchen, deck, patio, and two bedrooms on the second floor. It significantly enhances the scenic views from the back of my home. Importantly, it also provides shade to my backyard in the afternoon hours. In the hottest of the summer months, my comfortable, serene patio would be transformed into the Sahara Dessert for several hours of the day. Removal of this tree would also significantly and negatively alter the lighting and views affecting my home. Further, the removal of the tree to accommodate an oversized 14.5 foot high garage with cellar (one of 2 new cellars) only adds insult to injury.

I sincerely hope this does not come to pass.

IV. Economic Impact

There is no doubt that the construction of a new two story addition and 14.5 foot high garage (having 60 percent greater lot coverage) on the Pashby's small lot, not to mention removal of all their trees, will have a negative impact on the value of my home. Indeed, as mentioned above, 69 percent of the back of the Pashby's lot, which the back of my home faces, will be covered in building structures. Yet, if approved, this sums the "view" from my deck, patio, kitchen and 2 bedrooms. At present, the current view from my home is pleasant and serene, as evidenced by the photographs I have submitted to the BZA in support of this statement, and would be a selling point if my home were on the market.

I will supplement my application with data and/or testimony on the potential economic impact of the Pashby's proposed plans to my home prior to the scheduled hearing on the Pashby application.

V. Conclusion

The three homeowners who are most directly affected by the Pashby's renovation, each of whom have expressed strong objection, collectively represent over a century of home ownership in our current homes and investment in our community (a total of 106 years). Our concerns regarding the impact of the Pashby's proposed plans on the quality of our lives and the character of the neighborhood are significant. I urge the Board to protect our interests.