

Exhibit 7

**Detailed Statement Explaining How Application Meets the Specific Tests
for a Special Exception from 11 DCMR § 401 and § 404**

Introduction

The BZA may grant a special exception to both section 401 and section 404 so that Applicant can construct the proposed deck. See 11 DCMR § 223.1 (2007); § 3104.1 (2013). As discussed below, Applicant's request meets the test for a special exception set forth in the D.C. Municipal Regulations.

Rule

Section 223.1 provides that an addition to a one-family dwelling or flat in an R-3 District shall be permitted as a special exception even though the addition or accessory structure does not comply with all of the requirements of section 401 and section 404 if approved by the BZA under section 3104, subject to section 223.2. See 11 DCMR § 223.1 (2007). Section 3104.1 and section 223.2 authorize the BZA to grant special exceptions for additions to a one-family dwelling or flat where, in the judgment of the Board:

- I. The special exceptions will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps (§ 3104.1);
- II. The special exceptions will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps (§ 3104.1);
- III. The addition or accessory structure shall not have a substantially adverse effect on the use or enjoyment of any abutting or adjacent dwelling or property (§ 223.2), in particular:
 - A. The light and air available to neighboring properties shall not be unduly affected (§ 223.2(a));
 - B. The privacy of use and enjoyment of neighboring properties shall not be unduly compromised (§ 223.2(b));
 - 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 (§ 223.2(c)).

11 DCMR § 3104.1 (2013), § 223.2 (2007). Applicant discusses each of these elements below.¹

Analysis

The requested special exceptions from section 401 and section 404 and the proposed deck meet the requirements set forth in section 3104.1 and section 223.2. In particular:

- I. The special exceptions will be in harmony with the general purpose and intent of the zoning regulations and map. 11 DCMR § 3104.1 (2013).

Section 320.1 provides:

The R-3 District is designed essentially for row dwellings, but there shall be included in an R-3 District areas within which row dwellings are mingled with one-family detached dwellings, one-family semi-detached dwellings, and groups of three (3) or more row dwellings. To maintain a family-life environment, permitted related uses are the same in R-3 Districts as in R-1 Districts.

11 DCMR § 320.1 (2000); *see* 11 DCMR § 105.1(a)(3) (2011).

Here, the requested special exceptions will not impair the zoning regulations and map because the proposed special exceptions will not change the use of the property from its present use as a one-family row dwelling. The proposed special exception will allow for the construction of a deck on the back of the house, which will promote the “family-life environment” of the Applicant because he will be able to better enjoy the property with his family and friends.

In addition, the deck will allow the Applicant to spend more time outside at the back of the house comfortably, which will promote a friendly neighborhood environment for the people who walk in the alley.

¹ The statements herein are supported by Exhibit 5 (plat), Exhibit 6 (plans), and Exhibit 9 (photographs) to the present application for special exception. *See* 11 DCMR § 223.2(d).

- II. The special exceptions will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps (§ 3104.1);

The special exceptions will not affect adversely the use of neighboring property because the proposed deck is similar to other decks located in the neighborhood, and these similar decks have not adversely affected the use of neighboring property. This element is addressed in more detail below with respect to the next element and sub-elements. In addition, the owners of the neighboring properties at 1615 44th Street, NW and 1611 44th Street, NW support this application. Attach. A (e-mail in support from Erik Johnson, 1611 44th Street, NW); Attach. B (e-mail in support from Mallory Lawson, 1615 44th Street, NW).

- III. 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. 11 DCMR § 223.2 (2007).
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- A. *The light and air available to neighboring properties shall not be unduly affected.*

The light and air available to neighboring properties at 1611 44th Street and 1615 44th Street will not be adversely affected by construction of the proposed deck. The proposed deck will use minimally visible horizontal wire guard rails that allow for a maximum of light and air to pass through to the neighboring properties. In addition, the deck will not include any electric lighting features, so as not to disturb neighbors after dark.

- B. *The privacy of use and enjoyment of neighboring properties shall not be unduly compromised.*

The privacy of use and enjoyment of neighboring properties will not be unduly compromised because the proposed deck will not provide any views into the neighboring properties that are not already generally apparent from the house's sun room or from the rear alley.

- C. *The structure, together with the original building as viewed from the alley and any other public way does not substantially visually intrude upon the character, scale and pattern of houses along the subject street frontage.*

The proposed deck is in keeping with the character of the neighboring row houses. Many houses in the neighborhood have decks extending from the rear of the house in the manner proposed by applicant. The proposed deck will extend no further than the decks on adjacent properties (each of which extends 9 feet from the back of each of those houses). Applicant's architect has been careful to design the deck to ensure that the railing is not a defining feature of the deck. In particular, the railing will be horizontal heavy gauge wire that will not obstruct views of the house from the alley. Finally, Applicant expects to construct the deck out of ipe wood, which will weather to a neutral light grey color, which is generally in keeping with the Tudor style row houses in the neighborhood.

Conclusion

"In evaluating requests for special exceptions, the Board is limited to a determination whether the exception sought meets the requirements of the particular regulation on which the application is based." *French v. D.C. BZA*, 658 A.2d 1023, 1032 (D.C. 1995) (citation and quotation omitted). "The applicant has the burden of showing that the proposal complies with the regulation; but once that showing has been made, the Board ordinarily must grant the application." *Id.* (citation and quotation omitted). Applicant has demonstrated that pursuant to section 3104.1 and section 223.2, the special exceptions from section 401 and section 404 are in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps; the special exceptions will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps; and the proposed deck will not have a substantially adverse effect on the use or enjoyment of any abutting or adjacent dwelling or

property. Therefore, the BZA should grant Applicant's request for special exceptions from section 401 and section 404 so that applicant can construct the proposed deck.

Attachment A

Subject: Re: 1613 44th Street, NW deck

From: Erik Johnson [REDACTED]

To: [REDACTED]

Date: Friday, August 8, 2014 5:07 PM

Hi Conrad,

My parents looked at the plans and are fine with it. They really appreciate that you asked them and they hope it turns out great.

Thanks again and enjoy the weekend!

Erik

On Fri, Aug 8, 2014 at 10:38 AM, Conrad DeWitte [REDACTED] wrote:

Hi Erik,

Thanks!

Conrad

From: Erik Johnson [REDACTED]
To: Conrad DeWitte [REDACTED]
Sent: Wednesday, August 6, 2014 10:37 PM
Subject: Re: 1613 44th Street, NW deck

Hi Conrad,

Thanks for sending these. I forwarded them to my parents and I will touch base with you when I speak with them. Thanks

Have a good evening
Erik

On Tue, Aug 5, 2014 at 7:23 AM, Conrad DeWitte [REDACTED] wrote:

Hi Erik,

Thanks for talking with me on Sunday. Attached is a PDF of the drawings for the deck that I am proposing to build off the back of my house. It will extend out as far as your deck and Mallory Lawson's deck on the other side of my house at 1615 44th Street.

Please let me know if you or your parents have any questions. I have also attached current pictures of the site.

Thanks!

Conrad
202-321-1700 (cell)

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Erik Johnson



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Erik Johnson



Attachment B

Subject: RE: 1613 44th Street Deck

From: MALLORY LAWSON [REDACTED]

To: [REDACTED]

Date: Tuesday, August 5, 2014 7:55 AM

Looks very nice. I use my deck a lot - sunbathing at noon, eating out in nice weather. It's like adding another room. Let me know when they're starting and I'll park in the front if they want to use the space. [REDACTED]

Best,
M

Date: Tue, 5 Aug 2014 04:25:05 -0700

From: [REDACTED]

Subject: 1613 44th Street Deck

To: [REDACTED]

Hi Mallory,

I am almost (finally) ready to put the deck on the back of the house. I've attached copies of the plans. Please let me know if you have any questions. I hope to file the application with DC next week.

Hope you are having a great summer!

Conrad
[REDACTED]