

Presentation of Objections by Owners of 323 5th Street

As indicated in the Application, the applicant at 325 5th St is asking for a special exception for a nonconforming structure (Section 2001.3) an exception from lot occupancy requirements (Section 403.1) and open court requirements (Section 406.1) in an R-4 district.

The owners of 325 seek approval to add additions to 3 levels of the house.

- A. The most significant addition is to the first floor to add a breakfast nook and sunroom to a large kitchen.
- B. The most intrusive change affecting privacy and enjoyment of 323 would be the two wide slot windows opening through the proposed extension of the party wall into the kitchen of 325.

Description of the affected neighbor - 323 5th St.

The house at 323 5th S.E. was built in 1890. It is a row house in a block very densely built with most of the houses non-conforming with the 1958 zoning code. The house is narrower than many in the block with a lot width of 16.2 feet. It is a “boutique house,” gutted and renovated over the course of a year prior to our purchase. Shelton and Flynn did extensive landscaping.

It has a lot size of 1,709 sq. feet and living area of 1,588 sq. feet.

Mark Flynn and Robert Shelton bought the house in March of 1977. They have made no changes to the house.

Applicant - 325 5th St.

The house of Applicant at 325 5th S.E. was built in 1912. It is wider than 323 with a width of 18.5 feet. Gina Eppolito and Frances Slakey bought the house in 2009. The lot size is 1,944 sq. feet.

The house has a current living area of 2,829 sq. feet.

Upon acquisition the Applicant substantially renovated the interior the house. They also drilled through the concrete floor in the basement to create 943 sq feet of additional living space with a family room, children’s play room, laundry room, etc. Shelton and Flynn supported the project although concerned with removing the underpinning of the party wall on this 1890 foundation.

Relevant Facts

When 325 was constructed, an additional 12 feet was added along the party line to the rear of 323. 325 is currently 12 feet longer than 323. The Application and site plan are materially inaccurate in representing that it was only 7 feet. Similarly the site plans understate the size of 323. Thus there is a mass of masonry two stories in height extending 12 feet at present. It is proposed to make this wall 22 feet long, not the 17 reflected in the Application and drawings.

Actually it would seem that neither Applicant nor Applicant’s architect gave much thought to the effect of the scale of the existing condition, which will be compounded by the proposed project.

On April 14 Applicant filed corrections to the site plan to reflect the accurate depth of the existing brick wall. (See new sheets C-2 and C-3 dated 4-10-15. This is a week before the BZA hearing, after the hearing by the Planning and Zoning Committee of the ANC, and it would after the staff review by the Office of Planning (the staff review is required 2 weeks before hearing date.

Facts	Inaccuracies in Application as filed
• 12 feet of brick masonry 2 stories high along the party line • 10 feet added- story and a half of masonry along the party line Total 22 feet	• 7 feet of brick masonry 2 stories high along party line • 10 feet added- story and a half of masonry along the party line Total 17 feet
• 34 feet remaining to rear property line	• 39 feet remaining to rear property line

“The addition shall not have a substantially adverse affect on the use or enjoyment of any abutting or adjacent dwelling or property.”

- (a) **Light and Air** - Obviously the 22’ of brick wall of two or one and one-half stories in height blocks out the sun and breezes for 40% of your rear yard and deck. (See attached photos). The addition needs to be viewed in the context of what is already there in that light and air are already restricted.

Further, with the open porch, light and air is still allowed to filter through. The significant concern is that now that will be eliminated. Light and air are further limited by the large 4 story church structure (Ebenezer Methodist Church) on the same block to the southwest of the properties as well as by several large leafy trees on both the church property as well as several of the houses. An increased limitation should be considered in the context of the restrictions already present.

Sun Study

A Sun Study was filed on April 14. A copy of the conclusions was e-mailed to me a short time previously. The assumptions are not given. Ms. Fowler states in her letter filed and dated April 14, that the “existing conditions are shown in the potential matter of right build out.” This is also apparent from the part of the report which is filed. This is completely misleading and inaccurate as it assumes the closed in 6 feet of kitchen is already in place and that only 4 feet needs to be measured. She in effect is now arguing that only 4 feet is relevant for this Special Exception Application!

The report is further inaccurate in that it shows the entire 10 feet enclosed but it is currently open!

Moreover, the sun study measures the entire yard (apparently) rather than the relevant view from the rear of our house. The Sun Study should be disregarded.

Ms. Fowler referenced the sun study at the ANC hearing, and one member voiced reliance. Moreover the Office of Planning indicates mistaken reliance by letter dated April 14, 2015.

(b) **Privacy of Use and Enjoyment**

Two wide slot windows

The applicant proposes to install two slot windows on the property line wall that look directly from Applicant's kitchen. The dimensions are not shown but it appears to extend almost the width of the 10-foot extension. The report of the Office of Planning says, "If a window is included on the north wall of the addition, it would be no less than 6 feet above the ground floor." Not only are these slot windows an aberration from an architectural detail perspective but also they are an unwelcome intrusion to our privacy. A porch is used only on occasion; these two windows will appear whenever we glance out our all glass kitchen windows to the garden or sit on our deck.

It would be intrusive to say the least.

Further, the rear of the 325 is and will be glass. An additional light source is already planned to the South where the adjacent residence (327) is a solid brick wall and there is an open court.

The report of the Office of Zoning states, "if a window is included on the north wall of the addition, it would be no less than six feet above the level of the floor."

Enjoyment

The scale of the wall is not sympathetic to the architecture of 323. With 22 feet of masonry to the South and an extended deck on the house to the North, it turns our landscaped back yard into an alley like setting. And this is the impression from the rear of the house and when sitting on the deck. It is certainly possible and feasible that 325 will add on additional deck at first floor level although there are apparently no current plans for that.

- (c) **Shall not intrude upon the character, scale and pattern of houses** - The massing of the proposed house is no longer compatible with the scale of other houses and therefore creates a noticeable exception in the architectural fabric of the block. The new windows proposed on the property line are not typical anywhere in the neighborhood and are highly objectionable from a privacy and appearance perspective.

Attachment C-3 of the Application is misleading. There is no distinction on the block site plan as indicated in Document C-3 are shown as to what are decks and what are buildings. For example the two houses to the north have decks added.

What is currently in the Application?

1. Is the Application for a Special Exception of 10 feet with a Boot Strap Argument or an Application for Grandfather right of 6 feet with an unpermitted extension of 4 feet?

On April 7 Ms Fowler raised the argument for the first time in the ANC hearing that a 6-foot extension was permitted as a matter of right. She cited no authority. This argument was based on the premise that the added 4 feet would be trivial. Upon my request, by email a couple of days later, Ms Fowler directed me to the statutory reference of Section 2001. It was clearly intended to make equitable provision for modernizing buildings existing before the 1958 Zoning Ordinance. It is not readily apparent that melding a porch into a kitchen would be “ordinary modernization.”

Thereafter, by letter dated and filed April 14, Ms Fowler, architect/agent, asserted “It should be noted that per DCMR 11, Section 2001.2, the existing porch may be enclosed as a matter of right. The two level porch existed prior to 1958 and thus the footprint is grandfathered in. The relief we are requesting is merely for an additional 3 feet, 10 inches.”

However, 2001.3 (b) clearly states that change cannot result in an extension. The purpose of a Grandfather right is to accommodate pre-zoning building. It would not be appropriate however to add to non-conformity which is based on a Grandfather right. Thus the statute provides:

“(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 structure and addition combined.”

As previously discussed, the Sun Study assumes that the 6 feet is already existing and enclosed because it is legally a matter of right. Hence, the application is for only 4 feet.

2. What is in the Application and has it been properly amended?

Two site plans were filed April 14, correcting material mistakes as to the size and layout of 323. Also submitted was a letter of explanation by Ms. Fowler. This was not prejudicial to owners of 325, as we had pointed out the errors to Ms. Fowler in a meeting on March 28 as she states. However, it is prejudicial in that the Office of Zoning Staff as well as the ANC Planning and Zoning Committee did not have the corrections although Shelton noted that was his view at the ANC meeting.

We have wanted to accommodate our neighbors as shown by our previous support for their construction. We submit that the benefit to 325 is gained to the significant detriment of 323.

Thank you for your consideration and attention.

Bob Shelton and Mark Flynn
April 15, 2015