

Supplemental Filing
Special Exception Application
325 5th Street SE- BZA#18938

To: **The Office of Zoning**
Government of the District of Columbia
Suite 210 South
441 4th Street, NW
Washington DC 20001

From: **Jennifer Fowler**
Architect/Agent
1819 D Street SE
Washington, DC 20003

Date: January 4, 2016

Subject : **BZA Application for an Addition at 325 5th Street SE**
 BZA #18938

Dear Board of Zoning Adjustment,

This letter serves to respond to the concerns raised by the owners of 323 5th Street SE who have filed a request for consideration.

In Exhibit #58, Page 1, Mr. Shelton lists 4 items that he believes are inaccurate.

1. *The existing extension of two-story masonry along the party wall is 11 feet 10 inches and not 7 feet. (Corrected by filing on April 14}*

As Mr. Shelton states, the length of the wall was corrected in the plans and filed with the BZA on April 14th, well before the filing deadline. This corrected information was also presented to the ANC 6B full meeting on April 20, 2015 prior to their vote on the case.

2. *The total footprint will result in coverage of 66.2 % coverage rather than 63.6% (see attached Exhibit A).*

Mr. Shelton's calculation is incorrect. The space labeled "5" on Mr. Shelton's Exhibit A is 5'-0" wide, and therefore doesn't count against the lot coverage. The lot coverage totals were certified by Jennifer Fowler, a licensed architect, and were reviewed by OP staff.

3. *The current porch does not follow the party wall as represented in the filing and drawings. It is indeed 9 1/4 inches inside the property line (see attached a photo previously filed, Exhibit B).*

The demolition plans show the existing porch offset from the north face of the party wall which straddles the property line. The new addition will be built with a face-on-line wall per the approved plans.

4. *The Sun Study is not for 10 feet. It is 4.*

The sun study was intended to show the difference between the by-right modernization of the porch and the additional square footage requested in the application. This was explained to the ANC as well as the BZA and it was accepted as a valid sun study.

Board of Zoning Adjustment
District of Columbia
CASE NO.18938
EXHIBIT NO.62

Mr. Shelton asserts that the applicant failed to meet the Burden of Proof. Please see our responses to each of his points below:

I. THE APPLICANT FAILS TO MEET ITS BURDEN OF PROOF

A. THE LIGHT AND AIR AND ENJOYMENT OF OUR PROPERTY ARE ALREADY IMPAIRED BY THE ADJACENT HOUSE. THIS MUST BE CONSIDERED AS A MATTER OF LAW AND POLICY.

The property at 325 already extends 12 feet beyond our house with a two-story wall along the party line. Hence light and air are already significantly impaired. This fact is exacerbated by the dense construction in the environment together with the fact that our house is only 16.5 wide. It is clear that an additional restriction will be more intrusive where there is already impairment. Applicants accord this significant issue scant importance. For starters: the application shows the extension to be 7 feet rather than 12. While this error was noted at the March 29 meeting with Applicants' architect, revisions were not filed until April 14. This was one week after the meeting of the Planning and Zoning Committee and simultaneously with the report of the Department of Planning. Hence this significant factor was not properly considered or weighed.

The existing conditions were clearly shown in the official revised filings of April 14th and were factored into the decisions made by the ANC, Office of Planning, and the BZA. The revised filings were submitted in a timely manner such that all parties had adequate time to review. Mr. Cochran, the OP Staff member, was aware of the correction in the length of the wall and continued to support the project and testified as such at the BZA hearing on April 21, 2014.

B. THE SUN STUDY IS INAPPLICABLE AS IT IS FOR THE LAST 4 FEET AND THE PROPOSED ADDITION IS FOR 10. On April 14 one week prior to the BZA hearing and subsequent to the meeting of the Planning and Zoning Committee on April 17 Applicants filed a Supplemental filing to correct the error in the depth of the existing brick wall adjacent to the two properties. Applicants' architect also filed a Sun Study. The Sun Study should be disregarded. There is no foundation as to who did it, and a clear statement of the premises. Only a close examination, read in conjunction with the Applicants' text, reveals that only the last 4 feet are included in the study. As a predicate the filing (#41, "Supplemental Filing") stated: "2. 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 3'10". 2001.2 Except as provided in §§ 2001.11 and 2001.12, ordinary repairs, alterations, and modernizations to the structure, including structural alterations, shall be permitted. 3. A sun study was created in order to assess the impact on the light and air of 323 5th Street. The existing conditions are shown as the potential matter of right build out. The sun study indicates that there will be very little change in the shadows cast on 323 5th Street SE." 3 An examination of the sun study (Exhibit #42) clearly shows that the existing conditions are as given as noted by Applicants above. The study is "merely for an additional 3'10"". This is an application for a single addition pursuant to 11 DCMR §§ 223 and 3104.1. The sun study must be for the entire 10-foot addition.

The sun study was performed by the architect, Jennifer Fowler, using google Sketch up, based on the measurements of the proposed project. The sun study compares the matter-of-right enclosure/reconstruction of the original porch to the 10' addition as proposed. This was explained to the ANC and BZA, and it was accepted by committee members as a valid sun study. The sun study does not indicate that the addition is only 4'. Clearly the addition is 10' deep based on all of the application materials.

The BZA formally acknowledged the intent of the sun study in their order.

Excerpt from the BZA Order:

The Application

The application was self-certified pursuant to 11 DCMR § 3113.2 (Exhibit 4), and the Applicant was represented by her architect, Jennifer Fowler. (Exhibit 11.) In addition to the required architectural plans, elevations, site plan, and photographs, the Applicant submitted a sun study to assess the impact of the proposed addition on the light and air at the adjacent 323 5th Street property. (Exhibit 42.) The sun study compares light received with the existing footprint of the dwelling (as if it were enclosed) and the proposed dwelling with the addition. (Transcript of Hearing of April 21, 2015 (Tr.), p. 54-56.)

C. APPLICANTS ERRONEOUSLY ASSUME THEIR APPLICATION IS FOR 4 FEET. Applicants conclude and assert that the proposed structure “may minimally impact the light and air available to a portion of the proposed addition.” However, they similarly consider only the extra 4 feet at the end of the proposed structure. Paragraph II (a) states: “However, the increase in length of the proposed addition beyond the existing rear porch is minimal and therefore the impact will be minor.” This application is for a single addition, not for two. Section 2002.2 is irrelevant for any number of reasons including the facts that the porch is not on the footprint of the proposed addition and it is to be demolished. This was an application for a single addition pursuant §§ 223.

Once again, the application was drawn and approved for a 10’ addition. However, we studied the impact of the existing porch as enclosed as compared to the proposed 10’ addition. This was explained to and accepted by both the ANC and BZA.

D. THE BOARD, THE ANC AND THE PLANNING DEPARTMENT RELIED ON THE SUN STUDY AND DID NOT UNDERSTAND THAT THE STUDY WAS FOR 4 FEET WHEN THE APPLICATION IS FOR 10 FEET. The factual predicate for the Board’s decision is stated in paragraph 20. “The Applicant’s sun study demonstrated that that there would only be slight increases to the shadow cast on the rear of the property to the north that would be of limited duration on both a daily and annual basis. (Exhibit 45.)” However, Mr. Cochran testified (p. 50) the entire 10 feet was included in the sun study: “MR. COCHRAN: The sun study measures an entire proposed addition. It doesn’t measure just four feet, so I was looking at -- I assumed the results of the sun study of the entire proposed addition. I did not see a gap in the shadows that indicated that they had -- that they had simply taken the existing house, then done a gap, then done another four feet. No. The sun study showed the entirety of the proposed wall.”

As Mr. Cochran indicated, the sun study does indeed represent a 10’ addition.

II. PARTIES IN OPPOSITION WERE NOT ACCORDED DUE PROCESS OF LAW. A. THE VINYL WALL At the close of the Board’s hearing a motion to approve the Application was passed with two conditions: 4 - the deletion of the windows -an addition of a trellis The Application both in the exhibits and texts is based on a masonry wall. Applicants represent “that the proposed addition will be constructed with high quality, historically appropriate materials”. Subsequent to the Hearing and Decision Applicants filed a drawing and filing indicating the substitution of a vinyl wall. We did not see them, perhaps because it was on a new page in the electronic filing system. In any event we did not and do not approve of it. Certainly the condition of a trellis does not include changing the composition of the wall from masonry to vinyl. Vinyl on a house of this vintage in this neighborhood is totally inappropriate irrespective of whether it is covered in green. Actually, although the Board does not note this in its decision, it appears that Applicants have changed the entire addition--back and sides-- to vinyl in the drawing.

There are no vinyl walls in the plans. Based on the feedback from the BZA, the plans were revised after the hearing to show fiber cement siding such as Hardie Plank. The reason for this change was to minimize the visual mass of one long brick wall by changing the material at the addition. Additionally, the Office of Planning requested that we include a screening element, such as a green screen/trellis. We submitted revised plans on 5/14/15 per the request to include the siding and trellis panels.

Excerpt from the BZA Order:

OP Report

OP prepared a written report supporting the application. (Exhibit 45.) OP noted that, although the proposed addition would result in additional shadows being cast on the Opposition’s rear yard, the impact would be of limited duration on a daily and an annual basis, and that the proposed addition would not unduly affect light and air to any neighboring properties. (Exhibit 45.) The report concluded that the Applicant’s shadow studies demonstrate that, while some additional shadow would likely be cast on the rear of yard of the lot to the north, the impact would be of limited duration on both a daily and annual basis, and should not unduly impact the light and air available to the north-adjacent property. Further, the proposed addition could lessen an intrusion on privacy at the first floor level, as an open porch would be replaced by a wall that would screen reciprocal views between the Applicant’s and the neighbor’s property. Steve Cochran, the OP representative who prepared the report, also testified at the hearing. Mr. Cochran suggested at the hearing that the Applicant might install a “green screen wall” on the north side of the addition, so as to mitigate the impact of the addition on their neighbor to the north. (Tr., April 21, 2015, p. 28.)

The Addition

6. The Applicant proposes to demolish the existing two-story rear open porch addition and build an enclosed first floor addition and, above that, a new covered porch.
7. The Applicant proffered that it would eliminate the planned windows on the north wall of the addition.
8. **Following the public hearing, the Applicant revised its plans to change the material of the addition from brick to siding. The purpose of this revision was to differentiate the addition from the original brick wall. (Exhibit 54.)**
9. Following the public hearing, the Applicant revised its plans to change the second floor deck guardrail from a solid brick wall to an open guardrail. The purpose of this revision was to BZA APPLICATION NO. 18938 PAGE NO. 4 alleviate concerns of the Opposition Party regarding the height of the wall. (Exhibit 54.)
10. **Following the public hearing, the Applicant revised its plans to add a wall trellis on the face of the addition of the north wall. The trellis will allow plants to be grown on the surface of the wall in order to soften its appearance. (Exhibit 54.)**

B. THERE HAS BEEN INADEQUATE TIME TO PREPARE AND SECURE PROFESSIONAL ASSISTANCE AND THE PARTIES IN OPPOSITION HAVE BEEN THEREBY SIGNIFICANTLY PREJUDICED. The Application was filed as noted on our copy, December 17, shortly before our departure. We had been requesting copies of the Application drawings for some time. However, the exhibit by Mrs. Sloane (# 33) indicates that drawings had been available since October 9 and Applicants knew of our scheduled departure. Applicants agreed to stay the proceeding until our return. Immediately upon our return on March 19 we began to seek professional help. We attempted to retain local architects for assistance and talked to two architects with Capitol Hill experience. Neither wished to be involved in critiquing a colleague. We obtained counsel shortly before the meeting of the Planning and Zoning Committee.

The plans were filed with the BZA on December 9, 2014, and the original hearing was scheduled for February 3, 2014. The case was then postponed until April 21, 2015 to allow for the Mr. Shelton to have input. This was ample time to prepare materials for the hearing.

In conclusion we believe that the ANC, Office of Planning, and the BZA all understood the scope of the proposed addition, which was clearly described in the drawings and application materials. In his motion for reconsideration Mr. Shelton has not put forth any new information that would justify reopening the case.

Thank you for your consideration.



Jennifer Fowler