

Further Clarification of Motion for Reconsideration by Parties in Opposition
Robert A. Shelton and Mark Flynn
BZA Case 18938 – 325 5th Street, SE

I. APPLICANTS FAIL IN THEIR BURDEN OF PROOF

A. THE APPLICATION IS FOR ONLY THE OUTERMOST 4 FEET AND NOT FOR THE 10 FEET FOR THE ADDITION AS REQUIRED UNDER SECTION 223.

Applicants by filing dated April 14 filed a Sun Study with the Board of Zoning Adjustment. This Study reflects only the effect of the 4 feet of proposed building, which extends beyond the current two story, open white columned porch, which sits on top of a partially above ground “cellar”.

Applicants’ theory is obscure to say the least and not reflected in the original filing. It is nowhere mentioned in the Burden of Proof, which simply relies on Section 223. Only in a supplementary filing of April 14 did Applicants explain their theory. Ms. Fowler wrote: “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 existing porch may be enclosed as a matter of right.”

She continued: “ The relief we are requesting is merely for an additional 3’ -10”.

Hence, Ms. Fowler’s theory is that the Application is for only 4 feet and hence the Sun Study of 4 feet.

B. THE AUTHORITY TO MODERNIZE OF SECTION 2001.2 AND FOR A SPECIAL EXCEPTION UNDER 22.3 ARE NOT ADDITIVE.

2001.2 “...ordinary repairs, alterations, and modernizations to the structure, including structural alterations, shall be permitted”

First of all, there is no discussion either by Ms. Fowler or finding by the Board as to why the demolition of this porch and reconstituting it as part of an enlarged kitchen falls into the above. Ms. Fowler asserts that the BZA has in the past permitted enclosing existing structures and that may be so. That is not this case. The grandfathered right is in the middle of an enlarged kitchen!

Grandfather rights exist to authorize existing non-conformities at the time zoning restrictions are enacted. General legal principles would provide that such exceptions are to be strictly construed. Passing that- to conclude that an existing non-conformity can be demolished (which extinguishes the right) and that it continues to exist for purposes of enlarging that non-conformity under 22.3 does not follow. As a premise for her Sun Study Ms. Fowler assumes that the existing two-story porch is enclosed, and then demolished, but the right continues to exist such that the Special Exception Application is only for the additional 4 feet.

Moreover Section 2001.3 also provides that any addition shall not increase or extend any non-conformity. The Application includes extending the partially above ground cellar beneath the existing 6 feet. Hence, a further reason why 2001.2 does not apply.

As previously noted in the original Motion, Mr. Cochran in his testimony for the Office of Planning concluded that the Sun Study was for the entire 10-feet, because under applicable law it would be required.

II. THE TOTAL FOOTPRINT WILL RESULT IN COVERAGE OF 66.2% COVERAGE RATHER THAN 63.6%.

Ms. Fowler asserts in her written presentation to the Planning and Zoning Committee of the ANC writes:

“Mr. Shelton’s calculation is incorrect. The space labeled “5” (sic) - on Mr. Shelton’s Exhibit A is 5’-0” wide and therefore doesn’t count against lot coverage. The lot coverage totals were certified by Jennifer Fowler, a licensed architect and reviewed by OP Staff.”

To the contrary: The Zoning Map Glossary provides:

“Building Area” “The term ‘building area’ shall include all side yards and open courts less than five feet (5 ft.) in width, and all closed courts less than six feet (6 ft.) in width.” The court is closed and hence must be included in the building area computation.

III. The change in material from masonry to siding is inconsistent with the Board’s vote at the hearing and was unilaterally changed by applicants

The Board’s decision in an open meeting did not change the substance of the material, which is masonry in the Application and exhibits. The Board however did suggest a trellis would be desirable. And the Board also ordered the parties to meet to see if they could agree on a trellis.

The parties in Opposition have offered by e-mail to meet on two occasions but the response was not until a decision was reached in the Motion for Reconsideration.

However, the Applicant’s unilaterally changed the composition of the proposed wall. We did not know of the change until it was filed on the ISIS calendar together with the Board’s Order.

We can only conclude that the Board in its final Order concluded that this change had been agreed to. To say it has not been: would be an understatement.

IV. The second story porch is highly objectionable.

We have not emphasized this in the past because so much else is going on. However, this cruise ship structure where you walk out of your bedroom onto a balcony is most objectionable. It is inconsistent with houses on Hill and hugely infringes on our privacy. Mr. Cochran concedes that but says there is already a two-story porch. True: but the entire character and scale is changed where the graceful white columned covered porches are replaced by an architecturally inconsistent porch on top of an all brick first story kitchen. Changing the wall from solid brick to an open guardrail does not solve the problem.

Summary

Apart from the above there is an overriding point. Applicants see this as a 4-foot issue. It is actually a 22-foot issue of two stories with partially above ground cellar, mainly solid brick extending along the party line. The construction on this block as in most of Capitol Hill is very dense. Our lot is only 16.5 feet wide. The Applicant's house is already 3,000 square feet, with an already ample kitchen, which has a table for eating, adjacent to very good-sized dining room.