

April 10, 2015

Lloyd Jordan, Chairman
Board of Zoning Adjustment
441 4th Street, NW
Suite 210S
Washington, DC 20001
bzasubmissions@dc.gov

Re: BZA Special Exception Application No. 18960; 2807 Sherman Avenue, NW

Dear Chairman Jordan and Members of the Board,

I am the owner of 2809 Sherman Ave NW #1, which is adjacent to the north of the Applicant's property. Please accept this letter of opposition in response to the Applicant's prehearing statement. Exhibit No. 29 ("Prehearing Statement"). Filed as a separate exhibit in conjunction with this letter are two photos of the portions of Applicant's building that are currently in violation of the minimum side yard setback requirement.

The Board should reject the application since it adversely affects our light, privacy, and the safe enjoyment of our property, and the Applicant has not carried his burden to show otherwise. In the alternative, the Applicant's hearing date should be further postponed to allow for another round of notice and comment since the original application contained material inaccuracies, on which the current notice and comments were based.

I. The Board Should Reject the Applicant's Request for a Special Exception

The Applicant seeks to eliminate the side yard setback requirement by building intrusive bays and an outdoor staircase that closely border our property. Under the requirements of Section 223.2, the Board must disallow any addition that results in a "substantially adverse affect on the use and enjoyment of any abutting or adjacent dwelling or property," in particular stating a neighbor's light and air "shall not be unduly affected" or the "privacy of use and enjoyment...shall not be unduly compromised." It is clearly the applicant's burden to "demonstrate[e] compliance" with these

requirements. We respectfully request the Board deny this application since it will violate Section 223.2 by adversely affecting our light and privacy, as well as the safe use and enjoyment of our property under Section 3104.1.

A. Applicant's Bay Windows Adversely Affects Our Light and Privacy

Applicant's construction of bay windows adversely affects our light and privacy, and therefore the Board should reject the application on this basis. As reflected in the pictures provided, the bays jut out towards our property further blocking natural light, as well as impinging on our privacy by eliminating the buffer between our property lines and almost eliminating the distance between our windows and the bays. Before the bays were built, the wall and windows on the north-side of Applicant's building resulted in a minor loss of privacy and light. However, the buffer provided by the minimum setback distance was *crucial* to maintain a minimum threshold of privacy and light to allow for the continued enjoyment of the property. The loss of this buffer allows much closer contact between the two properties. Applicant's bays effectively eliminate the buffer between our exterior windows and erode any sense of privacy and effectively block all natural sunlight. Since the application results in an adverse impact on our property's light and privacy, the Board should reject Applicant's proposal on this basis.

B. Applicant's Outdoor Staircase Adversely Affects our Privacy and the Safe Enjoyment of our Property

As illustrated in the other picture we filed, the platform extending from Applicant's roof will connect to an outdoor staircase. The platform almost extends to our own roof, jutting out well past Applicant's roof. This staircase and platform will allow easy, yet unlawful, access to our roof, thereby adversely affecting our privacy and the safe enjoyment of our property.

Eliminating the minimum setback requirement will further reduce the safe enjoyment of our property in the event of another catastrophic event, such as a fire. While we appreciate the Applicant's representation that he will comply with D.C. building codes during the construction of

his property, the Applicant will be unable, nor do we expect him, to prevent every possible occurrence of a future fire or other catastrophic event. As detailed in our first letter of opposition, there have been two devastating fires at Applicant's property in the last few years. Our property was largely unharmed only because of the side yard setback requirement, which prevented the fire from jumping or damaging our property. It is puzzling that the Applicant casually disregards these safety benefits since the benefits stemming from the setback equally protect Applicant's property if for any reason a fire or other unfortunate event would befall our own property.

The Board should reject Applicants proposal to eliminate the minimum side yard setback requirement, since it would adversely affect the privacy and safe enjoyment of our property by allowing easy access to our roof and erode the safety buffer in case of a fire or other catastrophic event.

C. Applicant has Failed to Carry His Burden

The Applicant has not carried his burden to show that the special exception will not adversely affect the light, privacy, and safe enjoyment of our property. Instead the Applicant resorts to trivializing our concerns by claiming it is merely a *de minimis* loss. Applicant supports this claim by theorizing that if the building was somehow constructed differently, the Applicant would either need a lesser form of relief or could build it as a matter of right. See Prehearing Statement at 4 ("If the open space on the north side of the Building were not counted...only open court relief would be necessary"), 5 ("The third-story addition could be built as a matter-of-right by just moving the north side of the Building back to a five-foot width"). While we would be interested to see a proposal by the Applicant to move the entire north side of the Building back to a five-foot width, these theoretical situations are clearly not the case here and are not before the Board for consideration. The Applicant's multiple "what if" scenarios and unsupported claims that the loss of the setback requirement is *de minimus* do not carry his burden to show that the bay windows and outdoor staircase will not adversely affect our light and privacy, as well as the safe enjoyment of our

property. The Applicant has failed to explain why a special exception is even necessary for the enjoyment of his property, nor has the Applicant revised his application to propose any ways to mitigate the significant adverse impact on the enjoyment of our property. Therefore the Board should reject the Applicant's unsupported and conclusory arguments since they are not grounded in reality and lack persuasive support.

D. The Board Should Disregard Applicant's Attack on Neighbors Who Oppose His Application

The Board should similarly disregard the Applicant's attempt to punish those who oppose his application by implying to the Board that an illegal structure exists on his opponents' property. From his pre-hearing statement, it appears that the Applicant is attempting to distract the Board from the merits of his own application, and instead misdirect the Board to evaluate our roof deck and pergola structures, an unrelated issue that is not before the Board. Although we are not required in this hearing to prove the legality of these structures, we have attached the relevant building permit and inspection record in the hopes that the Applicant will not attempt to drag the proceeding further down this rabbit hole, which involves flyspecking the legality of his neighbors' buildings. The Board should further repudiate the Applicant's "scorched earth" tactics towards neighbors who merely exercise their legal right to oppose his application.

II. In the Alternative, Applicant Must Provide New Notice Based on the Admitted Inaccuracies of the Prior Application

Applicant concedes the original zoning application (Exhibit No. 9) contained inaccurate information. Prehearing Statement at 1 ("The zoning memorandum filed originally was not accurate"). Based on the flawed zoning application, the Office of Zoning provided notice to the relevant government agencies, Advisory Neighborhood Commission, and property owners within a 200 feet radius of the property. See Exhibit Nos. 13-21. On March 24, 2015, the Applicant filed a new self-certified zoning application (Form 135) correcting the flawed measurements underlying Applicant's requested relief. Exhibit No. 32. Between March 20, 2015 and April 6, Applicant

received letters from property owners, as well as reports from the relevant government agencies that were based on the flawed information in the original zoning application. See Exhibit Nos. 26-28, 34-35, 37.

The input received from these notices is based on the flawed information provided in the original zoning application, and therefore the accuracy of the input must now be called into question. The Applicant should be required to provide a new notice to all relevant government agencies and property owners, and await a new round of comments based on the corrected information in the revised application. A new round of notice and comments will also best serve the underlying policy of providing the government and public with notice and eliciting comments based on *factually accurate* information. If the Board allows applicants to provide faulty information during the notice and comment period without a new round of notice and comments, it will provide a perverse incentive to mislead the public initially, and “correct” the information after it is too late to incorporate it into the input provided. Therefore, the Applicant’s prior notices and the comments received should be rendered moot by the material inaccuracies in the original zoning application, and a new round of notices should be served to allow input based on accurate factual information.

III. Conclusion

In sum, allowing the Applicant to exceed the minimum setback requirements will adversely affect our light, privacy, and the safe enjoyment of our property. The Applicant has not carried his burden to show otherwise, and therefore the Board should reject the application. In the alternative, the Board should mandate the Applicant provide new notice and receive new comments since the original zoning application contained materially inaccurate information on which the prior notice and comments were based.

Sincerely,

/s/ Jeremy Hessler
Mr. Jeremy Hessler

Attachment A



Department of Consumer and Regulatory Affairs

Permit Operations Division

1100 4th Street SW

Washington DC 20024

Tel. (202) 442 - 4589

Fax (202) 442 - 4862



B

BUILDING PERMIT

THIS PERMIT MUST ALWAYS BE CONSPICUOUSLY DISPLAYED AT THE ADDRESS OF
WORK UNTIL WORK IS COMPLETED AND APPROVED

Issue Date: 06/26/2013

PERMIT NO. B1308021

Expiration Date: 06/26/2014

Address of Project: 2809 SHERMAN AVE NW Unit 1		Zone:	Ward: 1	Square: 2886	Suffix:	Lot: 0338
Description Of Work: Proposed scope of work to build light gauge steel frame structure roof deck with composite decking. Wood pergola and steel guard rails included per drawings.						
Permission Is Hereby Granted To: Justine Sarver		Owner Address: 2809 SHERMAN AVE. NW UNIT 1 20001			PERMIT FEE: \$718.31	
Permit Type: Alteration and Repair	Existing Use: Flat (Two Family)	Proposed Use: Flat (Two Family)			Plans: Yes	
Agent Name: James Rawlings	Agent Address: 1834 9th St. NW 20001	Existing Dwell Units: 2	Proposed Dwell Units: 2	No. of Stories: 3	Floor(s) Involved: 3	
Conditions/ Restrictions: new roof deck with pergola. the spacing on the roof members of the pergola shall be greater than 24 inches on center min.						
This Permit Expires if no Construction is Started Within 1 Year or if the Inspection is Over 1 Year. All Construction Done According To The Current Building Codes And Zoning Regulations; As a condition precedent to the issuance of this permit, the owner agrees to conform with all conditions set forth herein, and to perform the work authorized hereby in accordance with the approved application and plans on file with the District Government and in accordance with all applicable laws and regulations of the District of Columbia. The District of Columbia has the right to enter upon the property and to inspect all work authorized by this permit and to require any change in construction which may be necessary to ensure compliance with the permit and with all the applicable regulations of the District of Columbia. Work authorized under this Permit must start within one(1) year of the date appearing on this permit or the permit is automatically void. If work is started, any application for partial refund Lead Paint Abatement Whenever any such work related to this Permit could result in the disturbance of lead based paint, the permit holder shall abide by all applicable paint activities provisions of the 'Lead Hazard Prevention and Elimination Act of 2008' and the EPA 'Lead Renovation, Repair and Painting rule' regarding lead-based include adherence to lead-safe work practices. For more information, go to http://ddoe.dc.gov, Lead and Healthy Housing.						
Director: Nicholas A. Majett		Permit Clerk Keith Hawkins				
TO REPORT WASTE, FRAUD OR ABUSE BY ANY DC GOVERNMENT OFFICIAL, CALL THE DC INSPECTOR GENERAL AT 1-800-521-1639 FOR CONSTRUCTION INSPECTION INQUIRIES CALL (202) 442-9557 TO SCHEDULE INSPECTIONS PLEASE CALL (202) 442-9557.						

Attachment B

202-369-0118

Sep 27



DEPARTMENT OF CONSUMER & REGULATORY AFFAIRS

Government of the District of Columbia
Department of Consumer and Regulatory Affairs
 Inspections and Compliance Administration
 1100 4th St, SW; Washington, DC 20024

On-Site Inspection Record

Property Address & Unit Number: 2809 Sherman Ave NW

Site Representative & phone #: _____

Historic property? YES ☐ NO ☐ Parent Building Permit: _____

Third Party Inspection Company? YES ☐ NO ☐ Company Name: _____ Company Cert #: _____

Schedule Your DCRA Inspections
 24 Hours a Day, 7 Days a Week
 from your Phone
 Just Call 202-442-9557

Required?	Inspection Type (IVR Code) Check required inspections A WALL CHECK MAY BE REQUIRED TO BE APPROVED BY DCRA'S ZONING ADMINISTRATION	DATE	INITIALS AND BADGE/ ID #	
			APPROVE	DISAPPROVE
☐	☐ Footing (160)			
☐	☐ Foundation (130)			
☐	☐ Slab (178)			
☐	☐ Framing (100) -Accessibility <u>NOTE 9/10/13</u>			<u>GRC</u>
☐	☐ Insulation (110)			
☐	☐ Fire Final (174)			
☐	☐ Final (170) -Accessibility <u>NOTE 10-8-13</u>			<u>GRC</u>
☐	☐ Zoning by DCRA (175)			
Required? ☐	B 1308021 BUILDING Permit #			
Required? ☐	Permit #			
Required? ☐	Permit #			

Required?	Inspection Type (IVR Code) Check required inspections	DATE	INITIALS AND BADGE/ ID #	
			APPROVE	DISAPPROVE
☐	☐ Ground Work (400)			
☐	☐ Rough-in (410) -Accessibility			
☐	☐ Final (430)			
☐	☐ Gas Line / Gas Test (485)			
☐	☐ Rough-in (360)			
☐	☐ Final (380)			
☐	☐ Ground Work (225)			
☐	☐ Rough-in (215)			
☐	☐ Final (200)			
☐	☐ TPF (230)			
☐	☐ Building Final (715)			
☐	☐ Elevator Certificate Verified			
☐	☐ Boiler Inspection Verified			
☐	☐ Zoning Use (745)			
☐	C of O Inspections Permit #			

INSPECTOR'S NOTES

9/10/13 GRC Drawing are not clear at which height from
 Road level) deck is proposed. Get complete load design
 Analysis from Structural design Division and prepare
 complete sheeting and resubmit to DEPD permit for approval.

8 Revised drawings are attached

Permit

Permit

9/18/13

10-8-13 NOTE GRC Building limit is approved by DEP approved
 drawings and structural engineers verification Permit