

Reply to Ms. Waldmann's March 31, 2015 "Letter of Concern"

To: Board of Zoning Adjustment (BZA or Board)
441 4th Street NW Suite 200S
Washington, DC 20001

From: Diana Kurnit and Jonathan Brumer, Owner/Applicants
5330 42nd Street, NW
Washington, DC 20015

Date: April 3, 2015

Subject: BZA Case 18990, Rebuild of Rear Elevated Deck
5330 42nd Street, NW (Square 1664, Lot 30)

Dear members of the Board:

On March 31, 2015, Ms. Waldmann filed a "Letter of Concern" with the Board. *See* Exhibit 32. Her filing contains a number of inaccurate and misleading statements, and asks a few questions. Accordingly, we are filing this Reply to correct the record, respond to her questions, and to note several important points:

1. Ms. Waldmann implies that we are seeking a "variance" in her letter. Our application materials make clear that we seek a special exception, not a variance.
2. Ms. Waldmann implies that her enclosed porch and landing and walkway is smaller than our proposed deck would be. The opposite is true. Her addition is in fact larger in *every* dimension than our proposed deck would be under any of our three alternative plans.

Specifically, Ms. Waldmann's addition measures **19'6" wide and extends 10' from the back of her house** toward the alleyway over her driveway, plus an additional elevated walkway from her second floor door to porch and stairs that extend down to her driveway. *See* Exhibit 35 ("Application for Construction Permits on Private Property" that Ms. Waldmann submitted to the D.C. Government in July 1986, when she was seeking permission to build the deck that she later enclosed, along with the accompanying plans she submitted with that application that clearly show those dimensions.)¹

By comparison, our original plan for a proposed open air deck measured 19 feet across by 10 feet deep plus a small walkway and stair landing. *See* Exhibit 5. And our three alternative plans are for an open air deck that would be even smaller: only **19 feet across and 9'6" deep from the back of our house** over our brick driveway plus a small walkway (and a small stair landing in two of the three alternative plans.) *See* Exhibit 13 (Leveille Revised Plans).

¹ Please note that we obtained Ms. Waldmann's 1986 Permit Application and the accompanying plans from D.C. Archives and have redacted her home phone number to protect her privacy.

So Ms. Waldmann's enclosed porch extends 6 inches further out from the back of her house than would our proposed deck (under any of the three alternative plans we have submitted) and **her porch is also 6 inches wider than our proposed deck**, under any of the three alternative plans. And our proposed deck is open, so it will allow much more light on to her property than her enclosed porch does on to ours or her neighbors to the north. When Ms. Waldmann chose to enclose her deck in 2002, and put a roof on it, she produced a structure much taller and obstructive of light than the open air deck we are proposing to build. *See Exhibits 13 (Leveille Revised Plans), 19 (Color Photos of Our House and Adjacent Neighbor), 35 (Ms. Waldmann's permit application and plans).*

A comparison of Ms. Waldmann's addition to our proposed deck belies both her suggestion that our proposed deck would be out of character with the other nearby houses and her stated concern that its construction would set a new precedent.

3. Ms. Waldmann asserts in her letter that the "square footage of [our three alternative] options varies from 195 sq. ft. to 230 sq. ft" and that it is "not clear" to her "whether or not the square footage of the applicants' landing is included in these figures." *See Exhibit 32.*

Please note that we and our contractor have confirmed that the square footage numbers that appear in the three alternate plans we shared with Ms. Waldmann and filed with the Board include the sum of all of the following: (a) the square footage of the rectangular deck, plus (b) the square footage of the walkway from our house to the deck, plus (c) any stair landings.

4. Ms. Waldmann asserts in her letter that her "porch and landing . . . measure roughly 200 sq. ft." But this is only true if one ignores the square footage of her walkway. In fact, the square footage of her deck is 19.5' times 10' which equals 195 square feet before one counts the dimensions of her walkway. Her walkway is in all likelihood comparable in square footage to the dimensions of our proposed landing, and is clearly wider than the 3' width of her stairs and runs along and beyond the side of her enclosed porch. *See Exhibit 35.*

Since we are counting the dimensions of our walkway and landings in our square footage estimates, Ms. Waldmann may want to disclose her walkway's dimensions and include it when she makes representations about the square footage of her addition to the Board so that an apples to apples comparison can be performed by the ANC and Board if they wish.

5. Ms. Waldmann's letter "request[s] that the landing be a minimum of 10" inside the property line on the applicants' side." In fact, at our request, our contractor has reviewed the site plans and confirmed that under all of the plans we have submitted **the space between the left side of our deck/walkway and the fencing between our property and Ms. Waldmann's (which we assume marks the property line) would be slightly over 10 inches**, so her wish on this score will be granted should the Board grant our special exception request. Note also that the landing of our proposed deck is no wider than the landing was on our old deck.

6. Because of the close proximity of our house, Ms. Waldmann's house, and the houses across the alley, and because of the fencing along our property line, and the size of Ms. Waldmann's

addition and its proximity to our shared property line, a limited amount of light can reach her basement window to begin with. **Ms. Waldmann's own porch and landing that extends over her basement door surely has a more dramatic effect on the light she is able to receive in her basement door window than would the deck we are proposing to build.** Nor will her privacy or the use or enjoyment of her property be unduly affected for the reasons outlined in our application materials.

7. Ms. Waldmann's letter refers to whether stairs should be on the "east" or "west" side of our deck. We have checked and confirmed that her house is actually north of ours, so the stairs would technically be located on the west side of the deck, either near the "north" or "south" side of the deck, but we have referred to them in our application materials as being on the left and right side of the deck (from the vantage point of someone standing in our driveway facing the back of our house) to avoid any confusion.

8. Ms. Waldmann expresses concern that placing the stairs on the right side of the deck, from the perspective of someone standing in the alleyway facing the back of our house will "eliminate an opportunity for planting and greenspace." But that is not true – it will be possible for us to place plants on the deck, and shade tolerant plants under the deck, in that area and elsewhere. We are also keeping the large, shady red bud tree on that side. Moreover, if Ms. Waldmann's real concern is the effect on green space, we would think that she would favor placing the stairs on the side of our driveway where our green space is smaller and less usable to begin with (the right or south side) rather than placing an entire staircase on the left (or north) side of the deck, where the green space that would be effected is larger and more usable.

9. Ms. Waldmann's letter asserts that she has "concerns that granting a [special exception] will set a precedent that encourages future expectations of similar relief." But, with all due respect, any precedent that was set was set in part by her when she built her 19'6" by 10 feet deck plus walkway and stairs, and again when she enclosed her porch, further increasing its size and scope. *See Exhibit 35.*

While she was granted permits in the 1980s and early 2000s, it seems pretty clear that Ms. Waldmann's house and enclosed porch does not meet the 40% lot occupancy requirement that is being imposed on us. She has clearly exceeded that requirement and is now expressing concern that a new precedent will be set with our proposed deck. The fact is she helped set the precedent with her extension and we are now asking for fair treatment. Ms. Waldmann did not ever file an application for a special exception or other relief from the Board before she built her deck and porch, and was not asked by anyone to demonstrate that her addition did not adversely affect her neighbors' light, air, privacy, use and enjoyment, or green space before she was given a permit to do so.

The reality is that when someone chooses to live in a partially attached house in a densely populated urban neighborhood filled with houses that are in very close proximity to one another near a metro station, there are some limits to how much privacy may be reasonably expected.

As we explained in our burden of proof statement and illustrated in the accompanying photo exhibits, our proposed deck (under any of the proposed plans) is in keeping with the character of the neighborhood and the additions Ms. Waldmann and numerous other nearby neighbors have built over the years. *See* Exhibits 8, 17, 19, 20, 35.

10. Throughout this process, we have really tried to respectfully listen to and accommodate Ms. Waldmann's list of stated concerns and objections, and as soon as she noted her concerns, we went to the trouble of quickly having our contractor draw new alternative plans in an attempt to accommodate her.

11. We really do hope that some of these points help alleviate some of Ms. Waldmann's concerns and any questions that ANC or BZA members may have. Overall, we really wish that Ms. Waldmann was supportive of the deck that we are proposing to build. But building this new deck is very important to us and our family, and we have gone to great lengths to seek a special exception just so that we could rebuild our deck that would grant us about two more usable feet in depth than our original deck for our family's enjoyment—completely in line with the size and shape of Ms. Waldmann's—off the back of our house. We know that there is room for both of us to have nice back spaces to enjoy and we hope we can settle this all amicably.

Respectfully,

Jon Brumer and Diana Kurnit