

MEMORANDUM

TO: District of Columbia Board of Zoning Adjustment
FROM: Maxine Brown-Roberts, Project Manager
J Joel Lawson, Associate Director Development Review
DATE: May 5, 2015
SUBJECT: BZA Case 18990, 5330 42nd Street, NW

I. OFFICE OF PLANNING RECOMMENDATION

In a letter dated January 27, 2015, the Zoning Administrator referred the Applicant (Diana Kunit and Jonathan Brume) to seek a variance to construct a rear deck at 5330 42nd Street, NW that does not meet § 403, Lot Occupancy requirement.. The referral was subsequently revised by the Zoning Administrator, April, 8, 2015. Two options were provided for special exception review pursuant to § 223 to allow the construction of a rear deck that does not meet the following requirements:

- § 403, Lot Occupancy (40% maximum, 50% under § 223, 48 % and 50% proposed); and
- § 405, Side Yard (8 feet required, 1.3 feet proposed);

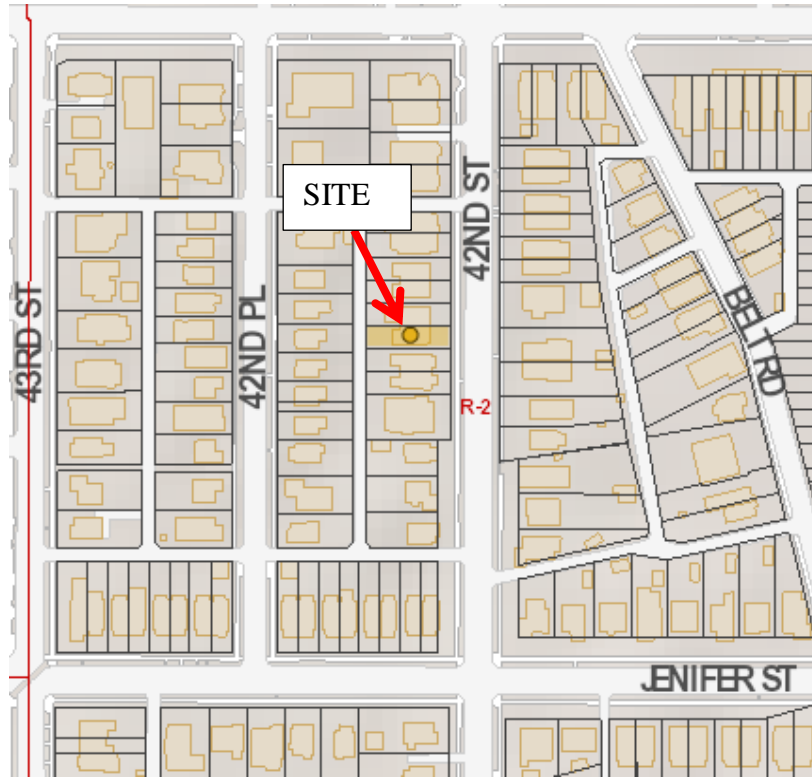
The Applicant also needs review for:

- § 2001.3, Creation of a non-conforming side yard.

OP notes that the property is non-conforming for lot area and lot width and side yard. The Office of Planning (OP) recommends **approval** of the requested special exceptions.

II. LOCATION AND SITE DESCRIPTION

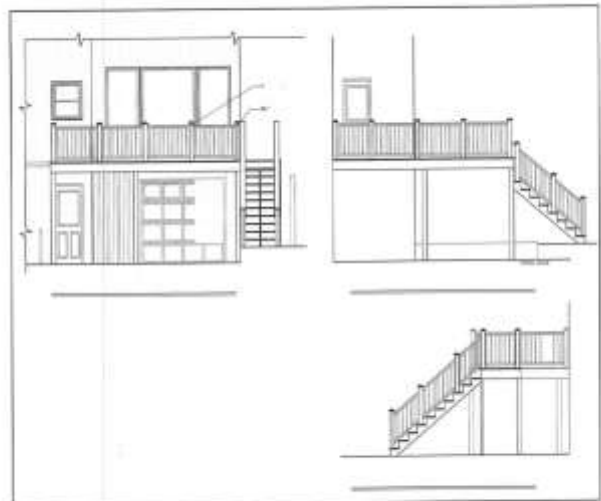
Address	5330 42 nd Street, NW
Legal Description	Square 2001, Lot 9
Ward	3, 3E
Lot Characteristics	The 2,346.5 square foot lot is rectangular in shape (25 feet x 93.86 feet). A fifteen foot building restriction line is along 42 nd Street. The rear of the lot abuts a 15 foot wide public alley.
Zoning	R-2 – one family, semi-detached, single family dwellings.
Existing Development	Two-story, single family, semi-detached dwelling.
Historic District	N/A
Adjacent and Surrounding Properties	Predominantly single family semi-detached dwellings.



Site Location



Rear of the Property



Proposed Deck

III. PROJECT DESCRIPTION IN BRIEF

The Applicant states that they purchased the house with a deck but it became unsafe and had to be demolished. The proposed replacement deck would have a new design with the stairs on the east side of the building, resulting in a side yard of 1.3 feet. The Applicant states that the stairs on the eastern location would lessen the impact on an existing tree and also allow for gardening in a small area. To enable the proposed deck, the Applicant requests review under § 223 for lot occupancy, side yard, and for creating a new non-conforming side yard. The Application provided two deck

options, one with a depth of 9.6 feet and the other with a depth of 10 feet. The resultant lot occupancies are 48% and 50% respectively.

IV. ZONING REQUIREMENTS and REQUESTED RELIEF

R-2	Regulation	Existing	Proposed	Relief
Lot Width § 401	30 ft. min.	25 ft.	25 ft.	Existing nonconforming
Lot Area § 401	3,000 sq. ft. min.	2,346.5 sq. ft.	2,346.5 sq. ft.	Existing nonconforming
Lot Occupancy § 403	40% max.	39%	48% and 50%	None required
Rear Yard § 404	20 ft. min.	29.76 ft.	20.16 ft.	Required - Expanding a nonconformity
Side Yard § 405	8 ft. min. 5 ft. (§ 205.8)	5.3 (existing)	5.3 ft. (existing) 1.3 ft. (new deck)	Required-Expanding a nonconformity

V. OFFICE OF PLANNING ANALYSIS

223 ZONING RELIEF FOR ADDITIONS TO ONE-FAMILY DWELLINGS OR FLATS (R-1) AND FOR NEW OR ENLARGED ACCESSORY STRUCTURES

223.1 An addition to a one-family dwelling or flat, in those Residence districts where a flat is permitted, or a new or enlarged accessory structure on the same lot as a one-family dwelling or flat, shall be permitted even though the addition or accessory structure does not comply with all of the requirements of §§ 401, 403, 404, 405, 406, and 2001.3 shall be permitted as a special exception if approved by the Board of Zoning Adjustment under § 3104, subject to the provisions of this section.

Semi-detached single family dwellings are a permitted use in the R-2 zone. The Applicant is requesting special exception review under § 223 for § 403, Lot Occupancy, § 405, Side Yard and § 2001.3, Creating a new non-conforming side yard.

223.2 The addition or accessory structure shall not have a substantially adverse effect on the use or enjoyment of any abutting or adjacent dwelling or property, in particular:

(a) The light and air available to neighboring properties shall not be unduly affected;

The proposed deck is closest to the neighbor to the west who has a similar deck. Concerns have been expressed that the light and air to the basement of that property would be affected by the proposed deck. The light and air is currently limited by the owner’s deck and stairs above and in front of the basement entrance and the existing fence between the two properties. The proposal that places the stairs on the east side would allow for light into the adjacent property.

On the west side, the deck would have a setback or 5.3 feet similar to the house. However, the stairs would extend further into the side yard and reduced the side yard to 1.3 feet. The stairs would be blocked by the fence that separates the two properties. The deck and stairs would not be covered and therefore would not be covered and would not block the light and air to the adjacent west property. The proposed height and area of the deck along with the location of the stairs would not substantially affect the light and air to adjacent residences or rear yards along the alley.

- (b) *The privacy of use and enjoyment of neighboring properties shall not be unduly compromised;*

Placing the stairs on the east side of the deck would help to reduce movements between the deck and the yard and reduce any noise generated by the use of the proposed deck. The neighbor's deck has a fence which would lessen views from the proposed deck onto their enclosed porch. Locating the steps on the east side of the property would further reduce any impact on the light and air of the western neighbor.

The privacy and use of the property to the west would also not be substantially impacted by the proposed deck as the side yards are greater and there is a fence separating the two properties. The property owner has also provided a letter of support for the proposed deck. With the 9.6 feet wide deck it would be setback 20.16 feet from the rear alley and with the 10-foot alley it would be setback 19.76 feet¹. In either case, the deck would not impact the privacy of properties across the alley.

- (c) *The addition or accessory structure, together with the original building, as viewed from the street, alley, and other public way, shall not substantially visually intrude upon the character, scale and pattern of houses along the subject street frontage; and*

The proposed deck would be visible from the public alley but not from 42nd Street as it would be screened by the main building. Many homes along the alley and in the neighborhood have rear additions, enclosed decks/porches and decks similar to that proposed by the Applicant. It is not anticipated that the proposed deck would substantially visually intrude upon the character, scale and pattern of houses along the adjacent alley.

- (d) *In demonstrating compliance with paragraphs (a), (b) and (c) of this subsection, the applicant shall use graphical representations such as plans, photographs, or elevation and section drawings sufficient to represent the relationship of the proposed addition or accessory structure to adjacent buildings and views from public ways.*

The Applicant has provided drawings, including a site plan, elevations and photographs, which sufficiently represent the relationship of the proposed addition to adjacent buildings.

223.3 *The lot occupancy of all new and existing structures on the lot shall not exceed fifty percent (50%) in the R-1 and R-2 Districts or seventy percent (70%) in the R-3, R-4, and R-5 Districts.*

The lot occupancy would be increased from 39% to 50% which is the maximum permitted within the R-2 district with the approval of a special exception.

223.4 *The Board may require special treatment in the way of design, screening, exterior or interior lighting, building materials, or other features for the protection of adjacent and nearby properties.*

The Office of Planning has no recommendations for special treatments for this application.

223.5 *This section may not be used to permit the introduction or expansion of a nonconforming use as a special exception.*

Advisory Neighborhood Commission 3E reviewed and voted to recommend approval of the requested special exceptions at their April 8, 2015 meeting (BZA Exhibit 40).

¹ The Applicant states that they would utilize the Zoning Administrator's 2% flexibility allowed under § 407.1 to reduce the required 20-foot rear yard.