

Austin Pearl
2024 North Capitol Street, NW
Washington, DC 20002

December 18, 2015

Delivery Via E-Mail

Marnique Y. Heath, Chairperson
Board of Zoning Adjustment
441 4th Street, NW, Suite 210S
Washington, DC 20001
bzasubmissions@dc.gov

Re: BZA Application No. 19018; 2026 North Capitol Street, NW

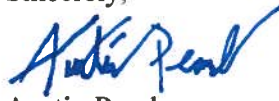
Dear Chairperson Heath and Members of the Board,

I am the immediate neighbor to the south of the above-referenced property, and I was present at the BZA hearing on this Application to express my opposition thereto.

I am now writing to inform the Board of Zoning Adjustment that I am no longer in opposition to the approval of the Application. I have met with the Applicant's counsel and have agreed to the Applicant's proposal for providing screening materials which would mitigate my concerns about privacy.

I also request that the Board include the requirement to provide and maintain this screening as a specific condition for any approval it may grant, pursuant to the language included in the attached covenant.

Sincerely,


Austin Pearl

Record and Return To:
Martin P. Sullivan
Sullivan & Barros, LLP
1990 M Street, NW, Suite 200
Washington, DC 20036

DECLARATION OF COVENANT REGARDING SCREENING

FOR DECKS, AND LIGHTING

This COVENANT (this “Covenant”) is made as of this 18th day of December, 2015 by and between Austin Pearl, owner of the property located at 2024 North Capitol Street, NW, in Washington, DC (“Neighbor”), and Colleen Slattery, owner of the property located at 2026 North Capitol Street, NW, Unit 2, Washington, DC (“Owner”).

RECITALS:

Recital No. 1. Owner owns the property and improvements located at 2026 North Capitol Street, NW (Square 3117, Lot 2012), Unit #2 (the “Subject Property”), as more particularly described on **Exhibit A** attached hereto and incorporated herein. Neighbor owns the property and improvements located at 2024 North Capitol Street, NW (Square 3117, Lot 90) (the “Neighbor’s Property”), as more particularly described on **Exhibit B** attached hereto and incorporated herein. Owner is the Applicant in Application No. 19018 for variance relief from the District of Columbia Board of Zoning Adjustment (“BZA”) to allow the continued existence of decks on the rear of the 2nd and 3rd floors of the Building (the “Application”).

Recital No. 2. The existence of the subject decks may negatively impact the privacy of the Neighbors.

Recital No. 3. Owner seeks to mitigate any such negative impact on the Neighbor’s Property and to otherwise provide assurances to Neighbor regarding the subject decks.

Recital No. 4. Owner agrees to request that the BZA make the terms of Sections 1 through 3 conditions of any approval, should the Board approve the Application.

NOW, THEREFORE, in consideration of the mutual promises set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties hereto, the parties hereby agree as follows:

1. Solid Screening. Owner agrees that permanent screening will be provided on the south end of each of the two subject decks by or before January 31, 2016; such screening to consist of wood or like materials, at a height of 6 feet (6 ft.) above the floor of each deck, for the entire width of the deck, and with openings no greater than one-half (1/2) inch between boards. This screening is generally represented by the photograph attached hereto as Exhibit C.

2. Maintenance of the Solid Screening. Owner agrees that she will maintain the solid screening wall in place in good condition at all times, and if no longer possible to reasonably maintain, will replace the solid screen in kind as required in Section 1 herein.

3. Lighting. Owner agrees and covenants and all exterior lighting on her property, including on the 2nd and 3rd floor decks and the roof deck, shall be moderately-illuminated down-lighting which faces away from the Neighbor's Property.

4. Restrictions. Owner agrees and hereby covenants that the conditions in Section 1 herein shall apply to the Subject Property in perpetuity, except as otherwise provided for herein.

5. BZA Submittals. In consideration for the promises made herein by Owner, Neighbor agrees to submit a letter to the BZA (generally in the form attached as Exhibit D hereto) by Friday, December 18, 2015, stating that he does not oppose the requested relief based on the screening provided pursuant to this Covenant. Owner shall also file a submission with the BZA, wherein it shall ask the BZA to incorporate, as a condition of any approval, the language in Sections 1 and 2 above.



6. Amendment. Modifications, waivers, and consents regarding this Covenant shall only be binding if in writing and signed by both parties.

7. Notices. All notices and other communications hereunder shall be in writing and either personally delivered (which will be deemed given upon delivery or upon the first refusal to accept delivery) or mailed by certified mail, or e-mailed to:

If to Owner:

Colleen Slattery
2026 North Capitol Street, NW
Washington, DC 20002
Collslatt2@gmail.com

If to Neighbor:

Austin Pearl
2024 North Capitol Street, NW
Washington, DC 20002
austinlewispearl@yahoo.com

The parties to this Covenant shall be responsible for notifying each other of any change of address or change in the persons to be notified.

8. Entire Covenant. This Covenant constitutes the entire agreement between the parties hereto and no party is liable to the other or bound in any manner by express or implied warranties, guarantees, promises, statements or representations pertaining to the subject matter hereof unless such warranties, guarantees, promises, statements, or representations are expressly and specifically set forth herein.

9. Counterparts. This Covenant may be executed simultaneously in any number of counterparts by original or facsimile signature, each of which shall be deemed an original, but all of which shall constitute one and the same Covenant.

10. Covenant Running with the Land; Binding Effect. The covenants and restrictions in this Covenant shall be deemed to constitute a covenant running with the land and shall inure to the benefit of Neighbor and his successors and assigns, and shall be binding upon the Owner, (or subsequent Owner, also known as "Owner") and any of Owner's respective heirs, executors, administrators, personal representatives or other legally appointed representatives, transferees, successors-in-interest, or assigns.

11. Recording. Owner shall, at her sole cost and expense, properly record this Covenant with the District of Columbia Recorder of Deeds and shall provide a copy thereof to the Neighbor.

[SIGNATURES ON FOLLOWING PAGE]

EXHIBIT A

Unit #2 from the following property: The North 20 feet front on North Capitol Street by the full depth thereof of Lot numbered Seventy-Eight (78) in a subdivision made by David Moore of lots in Block 4 in "Moore and Barbour's Addition to the City of Washington", as per plat recorded in Liber County 17 at folio 124 among the Records of the Office of the Surveyor for the District of Columbia.

NOTE: At the date hereof the above described land is designated on the Records of the Assessor of the District of Columbia for assessment and taxation purposes as lot 0834 in Square 3117.

Unit # 2 is designated on the Records of the Assessor of the District of Columbia for assessment and taxation purposes as lot 2012 in Square 3117.

Screening Covenant



EXHIBIT B

Lot numbered (90) in James R. Thomas and Mary B. Thomas' subdivision of lots in Block Four (4) "Moore and Barbour's Addition to Washington", as per plat recorded in the Office of the Surveyor for the District of Columbia in Liber 34 at folio 31; said Block 4 being now known for the purposes of assessment and taxation as Square 3117.

Screening Covenant



_____ 

EXHIBIT C

Representative photograph of the screening, to be compliant with Section 1 herein.

Screening Covenant

_____ 



AP

EXHIBIT D

The sample letter to BZA

Screening Covenant





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2024 North Capitol Street, NW
Washington, DC 20002

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Marnique Y. Heath, Chairperson
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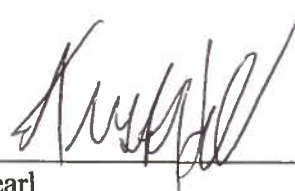
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I also request that the Board include the requirement to provide and maintain this screening as a specific condition for any approval it may grant, pursuant to the language included in the attached covenant.

Sincerely,

Austin Pearl

IN WITNESS WHEREOF, I HAVE EXECUTED THIS COVENANT ON THE
DAY AND YEAR FIRST ABOVE WRITTEN.


Austin Pearl

DISTRICT OF COLUMBIA) ss:

The foregoing instrument was acknowledged before me the 18th day of December,
2015, by Austin Pearl, who is personally known to me, or who has produced sufficient
identification of his identity.

[Notarial Seal]




Notary Public (Signature)

Print Name: _____

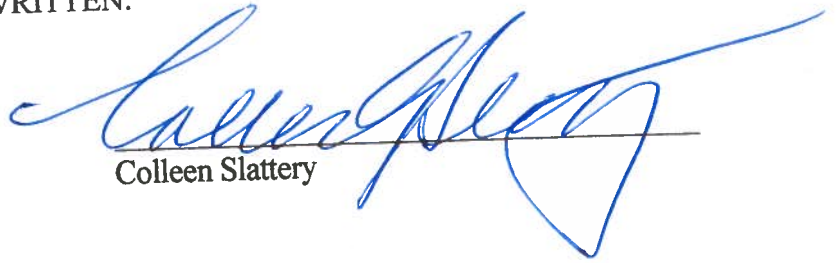
My Commission Expires: _____

Screening Covenant





IN WITNESS WHEREOF, I HAVE EXECUTED THIS DECLARATION ON
THE DAY AND YEAR FIRST ABOVE WRITTEN.


Colleen Slattery

DISTRICT OF COLUMBIA) ss:

The foregoing instrument was acknowledged before me the 18 day of December,
2015, by Colleen Slattery, who is personally known to me, or who has produced sufficient
identification of her identity.

[Notarial Seal]




Notary Public (Signature)
Oh Sung Choi
Print Name: Notary Public, District of Columbia
My Commission Expires 11/30/2016
My Commission Expires: _____

Screening Covenant



