

December 21, 2015

Via IZIS

Marnique Y. Heath, Chairman
Board of Zoning Adjustment
441 4th Street, NW
Suite 210S
Washington, DC 20001

**Re: BZA Application No. 19018 of Colleen Slattery; 2026 North Capitol Street, NW.
Additional Submission, including Neighbor Agreement;**

Dear Chairperson Heath and Members of the Board:

As requested by the Board, enclosed is a copy of the building permit application for the work that included approval of the subject 2nd and 3rd story decks for which variance relief is here being requested. Also included is a copy of an agreement reached – just this past Friday - between the Applicant and the immediate neighbor to the south. This agreement is a covenant – to be recorded in the land records – which would provide permanent screening between the deck area and the neighboring property.

To summarize, this Application is a request for variance relief from the requirements of Section 2001.3(a), the provision prohibiting additions to structures which already exceed the permitted lot occupancy. The construction of the 2nd and 3rd floor decks at 2026 North Capitol Street, NW, is not permitted by right since the property currently exceeds the maximum permitted lot occupancy of sixty percent (60%). There would be no increase in lot occupancy overall, as the 2nd and 3rd floor decks are constructed above what was an existing first floor deck. The second floor previously had a small deck/landing, and there was previously no third floor deck.

At the hearing on July 28, 2015, Mr. Austin Pearl, the immediate neighbor to the south, and the ANC 5E single member district commissioner, testified as a person in opposition, expressing, among other things, concerns about privacy from the subject decks. Late in the hearing, Board members discussed with Mr. Pearl the prospect of the Applicant scaling back the decks to match what was approved in the permit applications, and Mr. Pearl expressed that such a solution might address his privacy concerns. The Applicant then requested that the Board bifurcate the Application into the following requests: (i) request to approve variance relief to allow the existing 2nd and 3rd floor decks for the entire width of the house; and (ii) request to approve variance relief to allow the decks in the dimensions originally permitted by DCRA. There was also discussion about either removing one of the decks entirely, or scaling back the decks on the south side, in order to mitigate the privacy concerns of Mr. Pearl.

Following the hearing, the Applicant engaged in productive discussions with Mr. Pearl, which led to the covenant filed by Mr. Pearl on Friday, and attached hereto as well. This covenant provides for permanent screening, six feet high, on the south edge of both decks. The covenant provides further protection for Mr.

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Pearl, as well, in the way of lighting restrictions. The covenant will be recorded in the District's land records and will encumber the Applicant's property in perpetuity. The Applicant also requests that the Board, should it grant the requested relief, include the covenant's specific conditions in the Order, including the requirement for permanent screening and lighting restrictions (Sections 1 through 3 of the covenant).

The Applicant believes that the covenant mitigates the concerns of Mr. Pearl, as evidenced by his letter of withdrawal of his objections, and also that the terms of the covenant offer a solution which is less disruptive to the Applicant homeowner and to neighbors. As noted in the filings and at the hearing, the Applicant has presented a case for its reliance on a permit approval for the two decks, although a contractor error caused the decks to be constructed to the entire width of the home, rather than the having the deck end at the rear sliding door on the second and third floors, as originally approved.

The Applicant is requesting the additional relief to leave the decks as constructed, based on the practical difficulty of having to remove all or a portion of the decks, the *de minimus* nature of the request, and on the agreements reached in the covenant, which resolve the same issues intended to be resolved by scaling the decks back to what was originally permitted by DCRA.

Thank you for considering this request.

Sincerely,

A handwritten signature in dark ink, appearing to read "Martin P. Sullivan". The signature is fluid and cursive, with the first name "Martin" and last name "Sullivan" clearly distinguishable.

Martin P. Sullivan

cc: Austin Pearl
Teri Janine Quinn, ANC5E Chair