

**Board of Zoning Adjustment**  
**Variance and Special Exemption Request – Burden of Proof Statement**

**Date: 6-20-15**

Owners: Anthony Goodman and Norah Rabiah  
Address: 1152 4<sup>th</sup> Street, NE  
Square: 0773  
Lot: 0061  
Zone: R4

The applicant is requesting an Area Variance for:

1. Non Conforming Structure (2001.3): The original house is non conforming as it occupies 80.74% of the lot but has a conforming single family residential use. The applicant would like to add an addition to the non conforming structure.
2. Lot Occupancy (11-403): Currently the building area covers 80.74% of the Lot Area. They would like to add a deck over an existing parking pad that would increase the lot occupancy to 95.76% of the Lot Area. The applicant would also like to add a third floor on top of the existing 2 story (plus cellar) home, requiring zoning relief for expanding a non-conforming condition. The third floor addition would be 491 SF sitting directly above the existing house. The addition would be 49.7% of the lot area.

The applicant is requesting a Special Exception under 11-223 for:

3. Rear Yard (11-404): Currently the rear yard is 9'-5". By restoring the deck, the rear yard becomes 0'. The third floor addition does not extend past the existing rear wall of the house.
4. Lot Area (11-401): The lot is 987.39 SF, a nonconforming condition that requires 1,800 SF.

The lot is a rectangle and the structure on the lot is fully attached. Each lot (32) on the square is identical, with houses built in 1923. Nineteen of the houses have decks at the rear and many of them without decks have rear doors that sit about 10' above grade, indicating there were previous decks attached. Six houses on the block are fully enclosed all the way to the rear lot line or alley. When the applicant purchased the home, there were dangerous remnants of a deck, including an existing door 10' above grade. The dangerous elements were removed and the deck repaired and rebuilt where the existing structure was unsalvageable. Though there are no official records like building permits to indicate the construction of rear decks, the precedent on the square and the physical remnants conclusively indicate there was a deck attached to the applicant's house and therefore was an existing condition.

**Variance Request (Non Conforming Structure and Lot Coverage):**

1. The zoning relief sought does not change or undermine the intent and purpose of zoning regulations for R4 districts. R4 districts are designed to be single family residential use, utilizing low density, fully attached row houses. The applicant's request adheres to the intent and purpose of R4 districts by complying with the use requirements, and the height and scale requirements. By utilizing the unused attic space and existing roof slope, the 3<sup>rd</sup> story addition adds less than 4' to the total height of the building and stays 6' below the 40' allowed by right. The addition sits directly on top of the existing structural footprint to preserve the light and air for neighboring front and rear yards.
2. The public good is not impaired. The third story is set back from 4<sup>th</sup> street and the rear alley. Great care has been taken to blend the new story into the existing roof lines to maintain the entire streetscape and alley scape. The project stays well below the height limitation prescribed. No openings are proposed on the north or south (party walls). There have been no objections to the proposed plans by the neighboring owners and they have indicated their support of the

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proposed construction. Without relief, the applicant faces the exceptionally difficult task of having to relocate their family and sell their house.

3. The lot itself poses exceptional and practical difficulties. Unlike most DC blocks, there is an intermediate street between 3<sup>rd</sup> and 4<sup>th</sup> street NE – Abbey Place. In addition there is an alley between Abbey Place and 4<sup>th</sup> Street. As a result, all the lots in the square are truncated and exceptionally shallow (only 54.855’), and the lot area is roughly ½ of what is required by the zoning regulations. Because the lot area is ½ of what it is supposed to be, there is no way to meet the lot occupancy requirements.

### **Special Exception Requests (Rear Yard and Lot Area):**

Section 11-401 requires 1,800 SF lots. Given the existing street layout of the area, it is impossible to meet this requirement. In addition, the lots and houses were created prior to the existing zoning regulations and therefore were only made non-conforming when the existing regulations were put into effect.

Section 11-404 requires minimum 20’ rear yards. Again, the lots and houses were created prior to the existing zoning regulations and therefore were only made non-conforming when the existing regulations were put into effect. The 9’-5” rear yard is a non conforming condition and adding a deck increases the non-conforming condition but there is no feasible way to make the rear yard comply with the zoning regulations.

Under Zoning Chapter 11, section 223.1 an addition to a residential flat that does not comply with 401 (lot area) or 404 (rear yard) is permitted by a special exception if approved by the Board of Zoning Adjustment under 3104 due to the following:

1. The light and air for the neighboring properties will not be unduly affected. The proposed rebuilt deck is similar to more than half of the lots existing decks. Because the alley is less than 10’ from the rear door of all the houses on the square, the “backyard” is treated like a parking pad. The applicant and the applicant’s neighbors have been able to get some outdoor space by adding decks above the parking pads. Because the lots mostly use the minimal rear yard space for parking, there is no need for light and air at the alley level. Rather, the 1<sup>st</sup> floor deck is used for outdoor space and the proposed deck will be the same height and scale of the existing decks throughout the square.
2. The privacy of use and enjoyment of neighboring properties shall not be unduly compromised because there are no windows placed on either sides of the addition (shared party-wall property lines).
3. The addition will conform to the character, scale and pattern of the houses on the block. The addition would maintain this historic design philosophy. The roof will follow the slope of the existing roof line from the front and have a flat roof at the rear to minimize the impact on the street and alley scape. The addition will have a wood siding material or stucco to keep within character of the historic precedence set within the neighborhood. Considering that about 2/3 of the houses on the block already have decks at the rear, the applicant’s proposed deck would actually enhance the uniformity of the alley scape and be very much in keeping with the existing conditions.

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