

Response of the applicants to Mark O'Donnell's request for party status and his opposition to our application. (BZA - 19037)

1. In applying for party status, Mr. O'Donnell must show that the construction of this two level open rear deck would have an exceptional impact on his property that it would not have on other neighbors on the square. According to the BZA guidebook to meet the requirements for party status, Mr. O'Donnell must "clearly demonstrate that their interest would likely be more significantly, distinctly, or uniquely affected by the proposed zoning action than others in the general public."

There would be no significant, distinct, or unique impact on Mr. O'Donnell's property from this construction. In fact, there would be no impact on Mr. O'Donnell's property at all. First, the rear of our property is not visible from Mr. O'Donnell's rear lot. There are four properties between Mr. O'Donnell's house and our own. The two houses immediately to the east of Mr. O'Donnell's property both have two level porches, both of which are covered. The alley that separates the properties on Massachusetts and Independence then turns and exits on Independence Ave. At the end of that alley is a wooden privacy fence. After the privacy fence, the two houses nearest to ours both have open decks at 100 percent lot occupancy.

There is no reason for Mr. O'Donnell to access the rear walkway. The residents of the square with rear access the area from their homes use the ground level for trash storage and/or have compressor for their AC systems. All five neighbors with rear access to the walkway have written a letter in support of our application. The only time we or any of those neighbors has ever witnessed Mr. O'Donnell in the rear walkway was during his preparations to oppose our application. Any claim by Mr. O'Donnell that approving our application would significantly, distinctly, or uniquely affect his property more than others in the general public is false.

At the ANC Zoning meeting on 6/3, when asked by a commissioner what direct impact the construction of a rear 2 level open deck on our lot would have on his property, Mr. O'Donnell could not identify any. The ANC Zoning Committee voted 11-0 in support of our application.

2. Mr. O'Donnell claims that there are no similar structures with open decks or porches in the immediate area.

This claim is false. As shown by our photo documentation, almost every home in this square with the exception of our own has at minimum a one story rear open deck. There are multiple properties with two story decks, porches or additions, many of which are visible from the street.

3. Mr. O'Donnell's claim that neighboring properties are of similar sizes and therefore variance should be denied.

The lot occupancies on the properties referenced by Mr. O'Donnell are all between 95 and 100 percent lot occupancy. Two houses on Mass Ave immediately to the west both have 100 percent lot coverage in the form of open decks. To the east, the properties on Independence and Mass are joined. The property on Mass has a covered rear deck and lot occupancy of more than 96 percent along with a privacy fence that runs the length of the property line and onto our property in the form of a support post (which we have no issue with). The easternmost property on Independence is also over 97 percent lot occupancy with an open rear deck and has a privacy fence built to the property line. Properties built to almost 100 percent lot occupancy are the norm, not the exception at this end of the block. Photos illustrating this point have been provided.

4. Mr. O'Donnell claims that approving a variance for lot occupancy would "set a precedent under which no application for a variance for lot occupancy could be denied."

This is untrue. Each application for relief from Zoning regulations is determined on its own merits. The BZA Zoning Guidebook specifically states that "The granting of a variance relates only to the specific piece of property which is the subject of the application. It will not change the zoning classification of your lot or square."

5. Mr. O'Donnell's own request for a variance (which was approved) directly contradicts his own arguments opposing our application.

Mr. O'Donnell himself applied for a variance in 1989 to build a rear open deck. In his application, Mr. O'Donnell stated that the his property – the lot size of which is 2 ½ times the size of our own - had a rear yard that was unique due to the narrowing of the properties on the east side of the block due to the triangular nature of the square. He made no claim of hardship but stated that it would be unfair to deny his application as most other houses on the square had rear porches and decks. The ANC, OP, and BZA all approved his application for an open deck on those grounds. Now Mr. O'Donnell is arguing that there is nothing unique about the rear of our lot despite the fact that it lies even further down the block towards the triangular point on the east side of the square, and that we should not be allowed to build a rear open deck for that reason. A copy of his application to the ANC has been submitted with our supporting materials.

6. Mr. O'Donnell has asserted that because of "bad faith" the current application should be denied.

18 Months after the construction of a rear porch we were informed that we did not have the appropriate permits. When we did not receive a variance for the previous structure we applied for and received a demolition permit and removed the existing structure as instructed. My wife has consulted with the office of historic preservation on our current application and both of us have worked with both our ANC representative Chander Jarayaman and the full ANC, who supported our application 11-0 in their zoning meeting and 9-0 at the full ANC 6b meeting on 6/13. Mr. O'Donnell's claim of "bad faith" insinuates that the BZA should penalize our application due to the previous construction. Zoning regulations explicitly state that they are not meant to be punitive in nature.

7. Mr. O'Donnell has previously harassed members of my family and his opposition to our application here is an attempt to continue that harassment.

Mr. O'Donnell was involved in a lengthy property dispute with my mother Mary Donovan. During the course of the dispute Mr. O'Donnell's behavior became threatening and erratic. His attempts at intimidation included, but were not limited to:

- 1) While riding his bike on the sidewalk Mr. O'Donnell would speed up whenever he saw my mother and would attempt to frighten her by riding by her as closely as possible, causing my mother to jump out of the way in fear of being hit
- 2) Mr. O'Donnell took multiple photos of my mother inside her house from the front of the property, as well as on her porch and in her car
- 3) Mr. O'Donnell's wife Susan Ohler left hateful messages on my mother's answering machine

4) When my mother had a privacy fence dividing their properties installed after Mr. O'Donnell's threatening behavior, he verbally assaulted her, calling her a "criminal", a "murderer" and a "skank". My mother recorded his tirade on her cell phone and copies of the video can be supplied upon request

As a result of this and other attempts at intimidation, my mother took Mr. O'Donnell to DC Superior Court for a restraining order (Civil Action 1910-11).

During the hearing on April 4, 2011, Judge Tignor stated that he did not believe some of Mr. O'Donnell's testimony. When Mr. O'Donnell testified that the fire department officials advised him to "knock down" the privacy fence, Judge Tignor interjected "I don't believe that, you know," followed with "I think it's either a misunderstanding on your part, or a misrepresentation on your part," before stating "that's not believable to me." When the judge asked Mr. O'Donnell if he made a threatening hand gesture, Mr. O'Donnell replied "I don't recall." Judge Tignor said "that's not believable to me... Now your testimony is that you have no idea what the gesture means, but you might have made it, you just don't recall. And that's just not believable."

Mr. O'Donnell signed a one year consent order after the judge asked him whether he would prefer to sign the consent order or to have Judge Tignor rule on the case. A copy of the consent order is provided in our supporting document.

Three days after Mr. O'Donnell signed the consent order his wife Susan Ohler filed a meritless compliant seeking a temporary restraining order and preliminary injunction against my mother. Judge Susan Winfield denied the request for a restraining order and Judge Todd Edelman later denied the request for a preliminary injunction. On August 1, 2011 Judge Edelman issued an order dismissing outright all but one of the claims leaving only the demand by Mr. O'Donnell's wife for an easement across my mother's backyard.

Following a bench trial, Judge Edelman ruled for my mother and dismissed the case. Specifically relating to Mr. O'Donnell's testimony Judge Edelman stated:

"I just don't credit this testimony by Mr. O'Donnell for a number of reasons."

"It was contradicted by a lot of testimony at trial that I found more credible."

"It doesn't comport at all with the testimony about the specific incidents."

"I find that Mr. O'Donnell's account of the relationship [with my mother] doesn't really wash with what I saw of him in court."

"Also, I don't credit the testimony simply by his demeanor and the way he testified on the witness stand. He was very defensive... He claimed not to be able to recall many things. And he is clearly very angry with the defendant and her husband... and that's what overrode most of his testimony."

In summary, Mr. O'Donnell's opposition to our application is without merit for the following reasons:

First and foremost, approval of our application would in no way affect Mr. O'Donnell's property at all.

Mr. O'Donnell fails to meet the standard for party status as he in no way demonstrates that his interest would likely be more significantly, distinctly, or uniquely affected by the proposed zoning action than others in the general public.

Mr. O'Donnell's claim that there are no like rear porches on the square is false.

Mr. O'Donnell's claim that there are properties of a similar size on the square and therefore the application should be denied ignores the fact that the properties he references are all at or near 100% lot occupancy with rear decks or covered porches.

Mr. O'Donnell's claim that approving our application would set an untenable precedent is false.

Mr. O'Donnell's assertion that our application should be punitively denied on the basis of previous (and since removed) construction directly contradicts zoning regulations.

Mr. O'Donnell himself applied for and received a variance to build a rear open deck on the basis of the narrowing of the rear lots on the East end of the block, which he now argues should negatively impact our application.

Mr. O'Donnell has no need to use the rear walkway that connects to the rear of my property. The walkway terminates at a privacy fence between 1371 and 1367 Mass Ave SE. In the past year Mr. O'Donnell has only ever been witnessed in that area walkway when he was preparing his opposition to our application.

Mr. O'Donnell's opposition to our request for variances does not appear to be based on the application itself but appears to be a part of his years-long harassment of my family.

For the reasons above, Mr. O'Donnell's application for party status should be denied.

Sincerely,



Derek and Jennifer Mattioli
Owners/Occupants
1375 Massachusetts Ave SE