BOARD OF ZONING ADJUSTMENT
OFFICE OF ZONING

Pablo Martinez

Petitioner

Application Number 16987

2013 FEB -8 AM 8:26
D.C. OFFICE OF ZONING

RESPONSE IN SUPPORT OF APPLICATION NO. 16987 FOR A SPECIAL EXCEPTION

Mr. Martinez submits this brief in response to the closing arguments filed by Mr. Ewers and Mr. Stofferson, parties opponent to Application 16987 seeking a special exception pursuant to 11 DCMR 3104.1 to keep the rear deck at 1207 Clifton St. NW. This brief will first respond to the arguments presented jointly by Mr. Ewers and Mr. Stofferson and then address those presented individually by Mr. Stofferson.

When Mr. Martinez first submitted his permit application he included architectural drawings and a plat on which he provided the measurements of structures on his property. These measurements are subsequently cited in this case both by Mr. Martinez and the Office of Planning in their favorable report, and are the basis for the lot occupancy totals provided. The dimensions of the front porch were mistakenly left off the plat by Mr. Martinez and thus not included in the lot occupancy totals calculated by the Office of Planning. While Mr. Martinez concedes his inadvertent error in lot area calculations, this should in no way cause the Office of Planning to withdraw their unqualified support of the Application because the total lot occupancy is less then the 70% statutory limitation. All other issues remain unchanged. Mr.

BZA
Case No. 16987
Exhibit No. 36

Board of Zoning Adjustment
District of Columbia
CASE NO. 16987
EXHIBIT NO. 36

Martinez would like to stress that this omission was *not* intentional, nor an attempt to mislead anyone, but simply caused by his unfamiliarity with the task before him. Mr. Martinez has made every effort to comply with city regulations throughout the application process. In the interest of clarification, Mr. Martinez submits as Exhibit A, a copy of the previously submitted plat updated to include the dimensions of his front porch.

The house and its front porch at1207 Clifton St. NW are consistent with the other homes of the 1200 block of Clifton St. NW built in the same period. The porch can be seen clearly in the photographs of Exhibit B submitted by Mr. Martinez in his closing arguments. The dimensions of the front porch are 15.9' by 7.11' (113 sq. ft.) By adding 113 to the previous total lot occupancy figure of 1309 sq. ft. calculated by Office of Planning, the resulting total is 1422 sq. ft. which creates a total lot occupancy of 68.7%. If however, only the first 2.5 ft. of Mr. Martinez' front porch are within the building restriction lines as the parties opponent contend, and as is the case in the example plat provided by Mr. Stofferson, then only an additional 40 sq. ft. would be added to the previous total, resulting in 1349 sq. ft. and a lot occupancy of 65%. Either way, Mr. Martinez' home, with its rear deck addition, falls well within the maximum 70% allotted for the special exception.

The parties opponent have raised additional zoning issues in their closing arguments with regard to aspects of the Martinez home that are part of its original construction. For example, they assert that the spaces in between the front porches of Mr. Martinez' home and those of his adjacent neighbors are court niches and must be taken into consideration when calculating the percentage of lot occupancy pursuant to the definition of "percentage of lot occupancy" (11 DCMR 199.) These spaces, however, do not fit the definition of a court niche as defined in 11 DCMR 199 : *an indentation, recess, or decorative architectural treatment of the*

[illegible]

exterior wall of a building, not a court, which opens onto a street, yard, alley, or court. The spaces in between these porches are not caused by an indentation of the external wall of the home, but instead are spaces created due to the fact that the front porches do not span the entire width of the homes.

In their letter supporting Mr. Martinez' application, the Office of Planning acknowledges, "The court created by the board on board fence maintains the width requirements, but deviates from the area requirements. The court area remains open to the sky, and will not impede the admission of light and air." Similarly, according to their Notes and Computations, an open court requirement does not apply. The parties opponent contend that a 15 ft. minimum closed court width is required pursuant to 11 DCMR 406.1, directly contradicting their statement that "the existing court may have complied with zoning requirements when the original structure was built." The claim that a 15 ft. minimum width is mandated would mean that nearly every structure along the street frontage of the 1200 block of Clifton St. NW would have to be rebuilt in order to comply.

The parties opponent have also asserted that granting the Special Exception in this case will enable future building on the property. While the drawings submitted by Mr. Martinez in his permit application do show that a smaller structure *could* be built from the second level of the home, they are not a permit request for such a structure. A second level deck is included in the plan drawings merely to show that if one day a second structure were to be built, part of the support it would need is already in place. As this application is for an existing structure, a new permit would be necessary for any future construction. Granting the special exception for the existing deck in no way permits the construction of a second higher structure, nor does it imply as the parties opponent claim, "the Board's implicit approval of the future construction

provisions of his plans." Their speculation of such future structure is merely that, and is in no way relevant to this application.

Finally, in their analysis, the parties opponent's calculations of the percentage of lot occupancy based on the simple multiplication of lot dimensions are not a true representation of its definition in 11 DCMR 199. If we were to further apply these standards to Mr. Stofferson's property at 1209 based on the dimensions in the plat he provided, his home would not comply. Additionally, though his plat also does not dimension the rear two-level porch/deck structure of his home, if we can consider it drawn to scale he would also be guilty of violating the 20 ft. rear yard requirement. In fact, any rear structure built on homes from 1201 to 1211 Clifton St. would violate the rear yard requirement: these homes back directly onto the alley between Clifton and 12th streets and as is evidenced by the various plats provided, there is only 22.5 feet between their rear walls and the alley. In an attempt to create any usable space in the rear of these homes, it would be impossible to build a structure that would comply. The Martinez deck creates a livable rear space and goes a step further in creating an off-street parking space as well.

In a closing argument filed independently, Mr. Stofferson provides square footage estimates for rear structures on neighboring properties, but neglects to take into account that many neighboring homes, including his own, have two-level decks or similar second-level structures. Mr. Stofferson's references to the unusual height of the deck at 1207, and subsequent claim that the deck at 1207 "towers over my backyard," is also puzzling. The 1200 block of Clifton St. NW is on an incline from east to west, reaching its highest point at the intersection of 13th St. NW. This incline, which can be seen in the photographs at Exhibits A and B of Mr. Martinez' closing arguments, causes Mr. Stofferson's home to sit higher than the Martinez home.

Thus, Mr. Stofferson's own first-level deck, as evidenced in Exhibits B and C of this response, and as seen in Exhibit F of Mr. Martinez' closing arguments, is as high or higher than the Martinez deck.

With regard to Section 223.2 (a): *The light and air available to neighboring properties shall not be unduly affected*; Mr. Martinez has extensively shown through the time-stamped photographs of the rear yard of 1209 Clifton St. submitted in Exhibit D of his closing arguments, that his deck has a very small impact overall. While Mr. Martinez concedes that for a brief period of time in the late morning a small shadow may be cast, it is not likely, as Mr. Stofferson claims, "that at other times during the day there would be a more pronounced shadow." The photographs submitted by Mr. Martinez show exactly the opposite: that once the sun is high enough in the sky for the yard at 1209 to receive light in the rear yard, and on through the rest of the day, the Martinez deck does not unduly affect the yard at 1209 in any way.

With regard to Section 223.2 (b): *The privacy of use and enjoyment of neighboring properties shall not be unduly compromised*; Mr. Stofferson claims that the deck at 1207 allows a person to look inside the windows of his first floor dining room and second floor bedroom. Exhibits B, F and G of Mr. Martinez' closing arguments, as well as Exhibits D and E of this response show that it is also possible to see into these windows from the alley itself, as well as additional neighboring structures. A complying deck would allow for the same view, and there is nothing about the increased size of the deck that invades Mr. Stofferson's privacy.

With regard to Section 223.2 (c): *The addition 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 the houses along the subject street frontage;* Mr.

Stofferson asserts that the deck at 1207 Clifton St. is out of character with other decks in the neighborhood. In his closing arguments, however, Mr. Martinez has shown the variety of structures in the surrounding alley and neighborhood that demonstrate this is not the case. (See exhibits I and J.) Similarly, Exhibits A, F and G of Mr. Martinez' closing arguments show that his deck does not substantially visually intrude upon the character, scale and pattern of the houses along the 1200 block of Clifton St. NW.

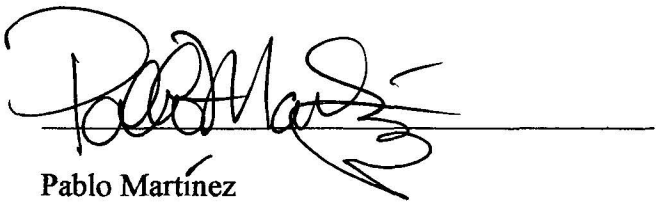
Conclusion:

Mr. Martinez has met the burden of proof, pursuant to 11 DCMR 3104.1 and Section 223 of the Zoning Regulations for the granting of a special exception to allow a rear deck addition to an existing flat. Mr. Martinez has successfully shown that his deck does not have a "substantially adverse effect" on his neighbors with regards to the considerations of Section 223: light and air, privacy and visual effect. The Martinez deck is part of the rehabilitation of a previously abandoned structure in a redeveloping neighborhood of the city, creates a usable rear space and takes a car off the street with the parking space beneath it. The renovations of the former Clifton Terrace Apartment Complex at the Southwest corner of 13th and Clifton Streets NW will soon create an increased demand for street parking in this neighborhood and on the1200 block of Clifton St. NW in particular. Mr. Martinez has made every effort to comply with the city's permit process and has received the support of his local ANC and the Office of Planning. It is consistent with the general intent and purpose of Zoning Regulations for the BZA to grant the special exception in this case.

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Dated: April 8, 2003

Respectfully submitted,



Pablo Martínez

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Brief in Support of Application No. 16987 for a Special Exception was served on April 8, 2003 by hand delivery and Federal Express, upon the following parties:

Robert Stofferson
1209 Clifton Street, NW
Washington, DC 20009

Larry Ewers
1205 Clifton Street, NW
Washington, DC 20009

Board of Zoning Adjustment
Office of Zoning
441 4th St, NW
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Pablo Martinez

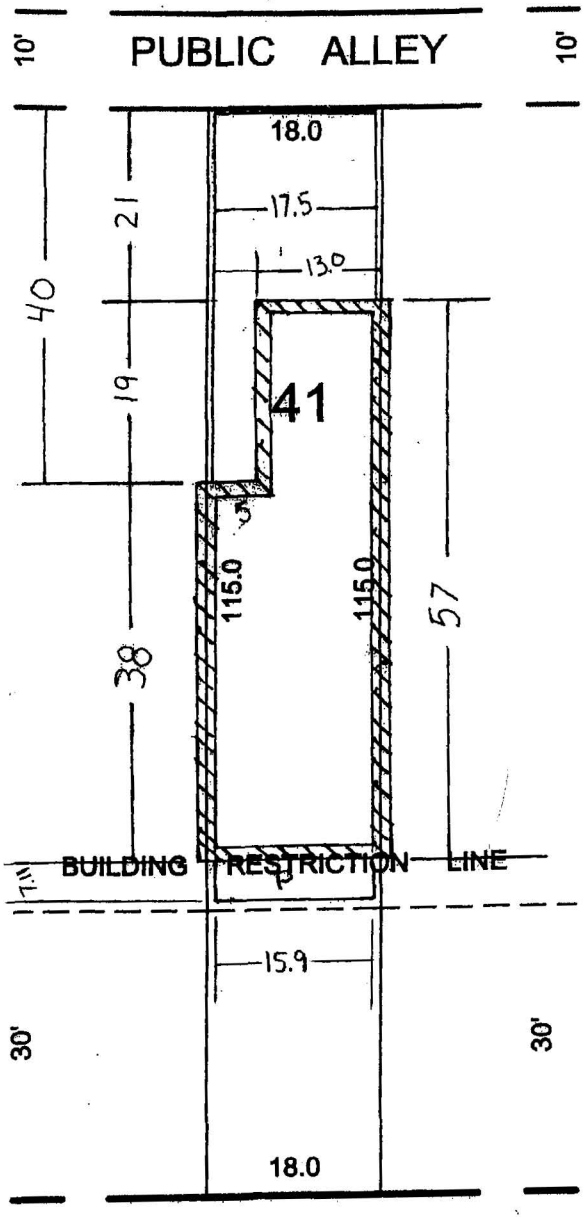

10'
PUBLIC ALLEY
10'
18.0
17.5
13.0
21
40
19
41
115.0
115.0
57
38
BUILDING RESTRICTION LINE
7.11
15.9
30'
30'
18.0
CLIFTON STREET

Exhibit A



Exhibit B



Exhibit C



Exhibit D



Exhibit E