AHMANN
ARCHITECTS

REGISTERED IN MARYLAND, VIRGINIA, FLORIDA,
AND THE DISTRICT OF COLUMBIA

STATEMENT ADDRESSING "BURDEN OF PROOF"

DATE: 04. 20 .05

TO: **Board of Zoning Adjustment**
of the District of Columbia
c/o Office of Zoning
441 4th Street, N.W.
Suite 210-S, Washington, DC 20001

RECEIVED
D.C. OFFICE OF ZONING
2005 APR 22 AM 9:34

REGARDING: **Special Exception Application for**
Proposed Deck Addition at
Property of Elizabeth Prestridge

SUBJECT PROPERTY: 5469 31st Street, N.W. Washington, DC 20015
Lot 6, Square 2295

STATEMENT:

GENERAL

The proposed deck was submitted along with a one-story addition as permit application 1576-C. The Zoning reviewer remarked: "Proposed deck doesn't have setback of side yard. If this proposal height less than 4' from grade - setback will be 50% of required side yard setback 8'. Please modify this proposal, otherwise, please get relief from BZA."

In an effort to expedite the permit for the one-story addition, we have submitted the modifications requested while pursuing this Special Exception.

BURDEN OF PROOF

a) **How the proposed Special Exception will be consistent with the general purpose of the zoning regulations and maps:**

1) The proposed deck will be less than four feet above grade and is therefore allowed by the Regulations.

Section 2503.2 allows for such a structure, stating: "A structure, not including a building no part of which is more than four feet (4ft.) above the grade at any point, may occupy any yard required under the provisions of this title. Any railing required by the D.C. building code, Title 12 DCMR, shall not be calculated in the measurement of this height."

Cont. on Page 2

BZA
Case No. 17348
Exhibit No. 5

Board of Zoning Adjustment
District of Columbia
CASE NO. 17348
EXHIBIT NO. 5

4408 BEECHWOOD ROAD, UNIVERSITY PARK, MARYLAND 20782-1129
PHONE: 301.864.1334 FAX: 301.864.6818

2) The proposed deck will occupy only 25% of the side yard and is therefore allowed by the Regulations.

The area of side yard is 568.84 square feet while the area of the portion of the deck in the side yard is only 142.28 square feet.

The statement of the Zoning Administrator's reviewer referring to a 50% setback of the required side yard setback of 8 feet, is, we believe, a mis-interpretation of the definition of yard, per section 199 of the Regulations which is written as follows:

"Yard - an exterior space, other than a court, on the same lot with a building or other structure. A yard required by the provisions of this title shall be open to the sky from the ground up, and shall not be occupied by any building or structure, except as specifically provided in this title. No building or structure shall occupy in excess of fifty percent (50%) of a yard required by this title."

The term "occupy" is not defined in the Zoning Regulations. However, when used in conjunction with a percentage limitation, it should be taken to signify a limitation on coverage (i.e. "percentage of lot occupancy," or, more to the point, from section 2500.3: "No more that thirty percent of the area of a required rear yard on any lot shall be occupied by accessory buildings"), and not a depth, or setback limitation. One would expect the Regulations to say, "No building or structure shall encroach more than one half the distance of the required minimum depth of a yard required by this title," if the intent is to describe a setback.

We can find no prescription for a setback requirement for a structure which is otherwise allowed by per section 2503.2

3) All other area and setback requirements are in conformance with the Zoning Regulations.

b) **How allowing the use will not adversely affect the neighboring property:**

1) The position of the proposed deck in the middle third of the side yard will shield it nearly completely as viewed from the street, alley, and all but one neighboring properties, this being 5471 31st Street, N.W. Mrs. Ronnie Ahern, owner of this property supports the approval of this request for Special Exception. Plantings at the front of the property as well as fencing at the rear add to the shielding.

2) The proposed deck is low to the ground - less than four feet, as previously stated. It is also modest in size, being only 234.32 square feet in area, only 142.28 feet of which is in the side yard.

3) The proposed deck is located adjacent to the neighboring side yard at 5471 31st Street, N.W. which is used primarily for utility functions. The side yard of 5471 houses two air condensers. Windows in the house at 5471 adjacent to the proposed deck are high above grade, as well as high in the rooms which they connect to, hence, there will be little impact on privacy for either property.

Cont. on Page 3

PER SECTION 223.2

a) **The light and air available to neighboring properties shall not be unduly affected:**

1) The proposed deck will be less than the four feet above grade and will occupy only 25 % of the side yard. The remaining portion of the side yard shall have the required minimum side yard depth of eight feet. All other area and setback requirements are in conformance with the Zoning Regulations.

2) As section 2503.2 makes specific provisions for just this type of structure in the side yard, it should be considered to be of minimal impact on the light and air available to neighboring properties.

b) **The privacy of use and enjoyment of neighboring properties shall not be unduly compromised:**

1) The proposed deck is located adjacent to a neighboring side yard used primarily for utility functions. The side yard of 5471 31st Street, N.W. houses two air condensers. Windows in the house at 5471 31st Street adjacent to the proposed deck are high above grade, as well as high in the rooms which they connect to, hence, there will be little impact on privacy for either property.

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 houses along the subject street frontage:**

1) The position of the proposed deck in the middle third of the side yard will shield it nearly completely as viewed from the street, alley, and all but one neighboring properties, this being 5471 31st Street, N.W. Ms. Veronica Ahern, owner of this property supports the approval of this request for Special Exception. Plantings at the front of the property as well as fencing at the rear add to the shielding.

2) The proposed deck is low to the ground - less than four feet as previously stated. It is also modest in size, being only 234.32 square feet in area, only 142.28 feet of which is in the side yard.

3) The proposed deck will be constructed of wood decking, brick piers and painted wood railings. This is consistent with the character of the neighborhood.

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1576-C

Department of Consumer and Regulatory Affairs

Building and Land Regulation Administration - Permit Service Center

March 02, 2005
11:36 AM

Comments

Received:
Date:

PLANS Y N | APPLICATION Y N

Engineering Coordinator Aziz Yacob (Eng. Coor.) Applicant/Agent THOMAS AHMENN 301-864-1334

Project Location: **5469 31ST ST NW**

Job No: **1576 C 5**

Required Reviews (Checked boxes only)	Reviewer	Completion Time	Review Status
☐ Public Space		☐ AM ☐ PM	☐ Approved ☐ HFC ☐Ref. to DPW ☐Conf. w/ Applicant
☑ Zoning 3/30/05 See HFC Below.		☐ AM ☐ PM	☐ Approved ☒ HFC ☐Ref. to BZA ☐ Ref. to Zoning Administrator ☐ Conf. w/ Applicant
☐ Soil Erosion ☐ Storm Water Mgmt		☐ AM ☐ PM	☐ Approved ☐ HFC ☐ Ref. to DOH ☐Conf. w/ Applicant
☐ Air Quality ☐ EIS		☐ AM ☐ PM	☐ Approved ☐ HFC ☐ Ref. to DOH
☐ Water & Sewer		☐ AM ☐ PM	☐ Approved ☐ HFC ☐ Ref. to WASA ☐ Conf. w/ Applicant ☐ WASA deposit required
☑ Mechanical/Plumbing	[illegible]	☐ AM 3/18 ☑ PM	☑ Approved ☐ HFC ☐ Conf. w/ Applicant
☐ Health		☐ AM ☐ PM	☐ Approved ☐ HFC ☐ Conf. w/ Applicant
☑ Electrical	[illegible]	☐ AM ☐ PM	☑ Approved ☐ HFC ☐ Conf. w/ Applicant
☐ Elevator		☐ AM ☐ PM	☐ Approved ☐ HFC ☐ Conf. w/ Applicant
☐ Fire Protection		☐ AM ☐ PM	☐ Approved ☐ HFC ☐ Conf. w/ Applicant
☑ Structural 3/10/05	[illegible]	☐ AM ☐ PM	☐ Approved ☑ HFC ☐ Conf. w/ Applicant 3/30/05

Remarks

(1) Proposed Deck doesn't have Setback of Sideyard. If this proposal height less than 4' from Grade → Setback will be 50% of Required Side Yard Setback 8'. Please modify this proposal. Otherwise, please get relief from BZA

BLRA 82A - Rev.2 - 10/04