

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Order No. 18990-A in Application No. 18990 of Diana Kurnit and Jonathan Brumer, as amended, pursuant to 11 DCMR § 3104.1, for a special exception under § 223 to allow a replacement rear deck addition at a one-family semi-detached dwelling, not meeting the lot occupancy requirements of § 403, the side yard requirements of § 405, and the nonconforming structure requirements of § 2001.3 in the R-2 District, at premises 5330 42nd Street, N.W. (Square 1664, Lot 30).¹

HEARING DATES: May 12, 2015 and June 16, 2015
DECISION DATE: June 16, 2015
FINAL ORDER ISSUANCE DATE: November 9, 2015
RECONSIDERATION DECISION DATE: December 8, 2015

ORDER DENYING RECONSIDERATION

By order dated November 9, 2015 (“Order”), the Board of Zoning Adjustment (the “Board”) granted an application submitted by Diana Kurnit and Jonathan Brumer (the “Applicant”) for a special exception to allow construction of a deck located within the rear yard of a one-family semi-detached dwelling. (Exhibit 49.) The parties to the proceeding were the Applicant; Advisory Neighborhood Commission (“ANC”) 3E; and Jane Waldmann (“Party in Opposition”), the owner of the adjacent property at 5332 42nd Street (“5332 Property”).

On November 23, 2015, the Party in Opposition filed a motion for reconsideration of the Board’s decision. (Exhibit 52.) In the motion, the Party in Opposition alleges the following errors in the Board’s Order: (1) that the Order referenced 26 letters of support from neighbors, almost all of whom will not be impacted by the new deck; (2) that the Order erroneously stated that the Applicant had attempted to address the concerns of the Party in Opposition; (3) that the Applicant’s

¹ This and all other references in this Order to provisions contained in Title 11 DCMR, except those references made in the final all-capitalized paragraphs, are to provisions that were in effect on the date this Application was heard and decided by the Board of Zoning Adjustment (“the 1958 Regulations”), but which were repealed as of September 6, 2016 and replaced by new text (“the 2016 Regulations”). The repeal of the 1958 Regulations has no effect on the validity of the Board’s decision or the validity of this order.

BZA ORDER NO. 18990-A
PAGE NO. 2

statement to the Board concerning the maintenance of green space and an existing tree by locating the stairs on the south side of the deck instead of the north side were erroneous; (4) that the record does not support that the Applicant is replacing a prior deck because the new deck is larger; (5) that the Party in Opposition enclosed her deck in 1986 whereas the correct date is 2002; (6) that the location of the stairs on the north side of the deck would require removal of an existing crepe myrtle; (7) that the new deck will not generate noise; (8) that the Party in Opposition's fence provides privacy for her own porch; and (9) that the Conclusions of Law were incorrect and in violation of 11 DCMR § 223.2(a) as the light and air of the neighboring property owned by the Party in Opposition will be impacted by the deck, and in violation of § 223.2(b) as the location of the stairway will not provide more privacy to the 5332 Property. The Party in Opposition sought as relief, either locating the stairs to the north of the deck along the shared property line, or moving the north edge of the deck south, to create a four-foot space between the northernmost end of the deck and the 5332 Property.

The Applicant filed a statement in opposition to the motion for reconsideration dated November 26, 2015, (Exhibit 52), contending the following: (1) The ANC voted 5-0 in favor of the application even after hearing the objections of the Party in Opposition, (2) the Office of Planning provided support for the application, (3) 26 letters of support were provided from nearby property owners, (4) the Party in Opposition conceded at the hearing that her own porch blocked light and air from her basement, and (5) the case was presented to the Board twice. The Applicant went on to note that the Findings of Fact which the Party in Opposition stated were not being supported by the record, were in fact all supported by the record, and to the extent any Findings of Fact were incorrect, the errors were inconsequential. Similarly, the Applicant argued that the Party in Opposition's objections to the Conclusions of Law were without basis. Finally, the Applicant contended that the motion failed to establish that the relief sought by the Party in Opposition is necessary to ensure that light and air available to neighboring properties will not be unduly affected; privacy and use and enjoyment of neighboring properties will not be unduly compromised; or the addition, along with the original building, when viewed from the street or other public way, shall not visually intrude upon the character, scale and pattern of housing along the street frontage.

At a public meeting on December 8, 2015, the Board voted to deny the motion for reconsideration.

CONCLUSIONS OF LAW

Pursuant to 11 DCMR § 3126.2, any party may file a motion for reconsideration or rehearing of any decision of the Board within ten days after a final written order is issued. In this instance, the Board waives the 10-day filing deadline, as the Party in Opposition represents it was given the incorrect date for submitting their motion for reconsideration. The Board may waive the filing deadline under §3100.5 "for good cause shown" if it "will not prejudice the rights of any party and is not otherwise prohibited by law." The Board found that the standard is met in this case and waived the filing deadline.

BZA ORDER NO. 18990-A
PAGE NO. 3

A motion for reconsideration must state specifically all respects in which the final decision is claimed to be erroneous, the grounds of the motion, and the relief sought. (11 DCMR § 3126.4.)

The Board finds that the instant motion does not provide a sufficient basis to reconsider its decision to grant the application in this case. The Board finds the issues raised in the motion were addressed at the hearing where the Party in Opposition was permitted to testify and to cross-examine. The multiple errors in fact cited by the Party in Opposition in her motion were either raised at the hearing or, if in error, were inconsequential. Therefore, the Board finds that there are neither errors nor new issues raised that have not already been addressed by the Board and sufficient evidence supports the Board's findings.

For all of these reasons, the Board hereby **ORDERS** that the motion for reconsideration is **DENIED**.

VOTE 3-0-2 (Marnique Y. Heath, Jeffrey L. Hinkle, and Marcie I. Cohen (by absentee ballot) voting to DENY; Frederick L. Hill not participating; one Board seat vacant).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

A majority of the Board members approved the issuance of this order.

ATTESTED BY: _____


SARA A. BARDIN
Director, Office of Zoning

FINAL DATE OF ORDER: January 28, 2019

PURSUANT TO 11 DCMR SUBTITLE Y § 604.11, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO SUBTITLE Y § 604.7.