

MEMORANDUM

TO: District of Columbia Board of Zoning Adjustment

FROM: Jonathan Kirschenbaum, Case Manager
JL Joel Lawson, Associate Director Development Review

DATE: June 1, 2018

SUBJECT: BZA Case 19761 – 2825 11th Street, NW to permit the legalization of the existing, nonconforming first floor deck in the rear of the subject property for Unit No. 1.

I. RECOMMENDATION

The Office of Planning (OP) recommends **approval** of the following special exception relief:

- Lot Occupancy, Subtitle E § 304.1, pursuant to Subtitle E § 5201 (60% maximum permitted, 69.7% existing and proposed to be legalized);
- Rear Yard, Subtitle E § 306.1, pursuant to Subtitle E § 5201 (20 feet minimum permitted, 15.5 feet existing and proposed to be legalized); and
- Nonconforming Structures, Subtitle C § 202.2, pursuant to Subtitle E § 5201 (legalization of an existing, nonconforming deck in the rear of a nonconforming structure).

The subject property is a condominium building with two units in separate ownership. Each unit has an existing nonconforming deck in the rear of the property. This special exception request is filed on behalf of the owner of Unit No. 1 (the lower unit) for the first-floor deck only. The zoning relief calculations provided by the applicant only pertain to the area for Unit No. 1, and not the area for the entire building, which would also include Unit No. 2. OP notes that there is a difference in building area between Unit No. 1 and Unit No. 2 (Exhibit 5), since the upper unit deck appears to be slightly larger.

The applicant has not requested, and this report does not analyze, relief for the corresponding upper unit deck. Should the owner of Unit No. 2 decide to legalize the second-floor deck in the future, additional relief in a new, separate application would be required. **Any Order issued for this case should clearly state that the relief considered by the BZA is for the lower unit deck only, and that relief has not been considered for the upper level.**

OP would normally not support the review of “partial” building relief such as this. Because the upper deck appears to be slightly larger, the property as a whole - which is how lot occupancy is measured – may be non-conforming for lot occupancy to an extent that variance relief would be required, not special exception. However, the applicant has provided in the application (part of Exhibit 11), a concurrence from the Zoning Administrator that special exception relief for lot occupancy and rear yard are required for the lower unit deck. OP also acknowledges the highly unusual circumstances in this unusual case, of separate owners attempting to address previously constructed nonconforming decks with various code issues. At this point, the fate of the upper unit deck is unknown, so review of the lower unit deck alone has been requested. The applicant has advised OP that the owner of the upper unit does not wish to be part of this case. While not optimal, as this is what has been requested, OP has provided analysis accordingly.

II. LOCATION AND SITE DESCRIPTION

Address	2825 11 th Street, NW
Applicant	Lisa McGuire
Legal Description	Square 2857, Lot 49
Ward / ANC	1/1B
Zone	RF-1
Lot Characteristics	Rectangular interior lot measuring 18 feet in width and approximately 65 to 67 feet in depth. The lot is bounded by 11 th Street, NW to the west, a 15-foot improved public alley to the east, and adjoining lots to the north and south.
Existing Development	Three-story, two-family attached row house.
Adjacent Properties	Three-story attached row houses.
Surrounding Neighborhood Character	The surrounding neighborhood character is two- and three-story attached row houses, with residential uses. There is a public charter school located across the street from the subject property on 11 th Street, NW.
Proposed Development	The applicant proposes to legalize an existing, non-compliant first floor deck in the rear of a nonconforming structure pursuant to Subtitle E § 5201. The request is made on behalf of the owner of Unit No. 1. Relief is required from lot occupancy and rear yard requirements, and from limitations on enlargements or additions to nonconforming structures.

III. ZONING REQUIREMENTS and RELIEF REQUESTED

RF-1 Zone	Regulation	Existing ¹	Proposed	Relief:
Height (ft.) E § 303.1	35 ft. max./3 stories	35 ft./3 stories	No change	None required
Lot Width (ft.) E § 201.1	18 ft. min.	18 ft.	No change	None required
Lot Area (sq. ft.) E § 201	1,800 sq. ft. min.	1,203 sq. ft.	No change	None required (existing nonconformance)
Floor Area Ratio	None prescribed	N/A	N/A	N/A
Lot Occupancy E § 304.1	60% max.	69.7% ²	69.7%	Special Exception requested: 9.7%
Rear Yard (ft.) E § 306.1	20 ft. min.	15.5 ft.	15.5 ft.	Special Exception requested: 4.5 ft.

¹ Information provided by the Applicant. See Exhibit 10.

² For the lower level, Unit 1 only – lot occupancy for the building as whole appears to be larger than this, exceeding 70%

RF-1 Zone	Regulation	Existing¹	Proposed	Relief:
Side Yard (ft.) E § 307.3	None required, but 5 ft. min. if provided	N/A	N/A	None required
Court E § 203	2.5 in./1 ft. height min.	N/A	N/A	None required
Parking Requirements C § 701.5	1 parking space per 2 dwelling units	2 parking spaces	2 parking spaces	None required
Parking Space Size C § 712.5	9 ft. width by 18 ft. depth per space	8 ft. width & 16 ft. depth per space	8 ft. width & 16 ft. depth per space	None required (existing nonconformance) ³

IV. ANALYSIS

Subtitle E Chapter 5201 ADDITION TO A BUILDING OR ACCESSORY STRUCTURE

5201.1 The Board of Zoning Adjustment may approve as a special exception in the R zones relief from the following development standards of this subtitle, subject to the provisions of this section and the general special exception criteria at Subtitle X, Chapter 9:

- (a) Lot occupancy;*
- (b) Yards;*
- (c) Courts;*
- (d) Minimum lot dimensions;*
- (e) Pervious surface; and*
- (f) The limitations on enlargements or additions to nonconforming structures as set forth in Subtitle C § 202.2.*

The applicant requests relief from the following development standards:

- lot occupancy;
- rear yard; and
- limitations on enlargements or additions to an existing nonconforming structure.

5201.2 Special exception relief under this section is applicable only to the following:

- (a) An addition to a residential building;*
- (b) A new or enlarged accessory structure that is accessory to such a building; or*
- (c) A reduction in the minimum setback requirements of an alley lot.*

The applicant requests to legalize the subject deck located in the rear of an existing nonconforming residential building at the first floor.

³ The applicant submitted correspondence from the Zoning Administrator stating that the two substandard sized parking spaces would be considered nonconforming, and would be allowed to continue use.

5201.3 *An applicant for special exception under this section shall demonstrate that the proposed addition or accessory structure shall not have a substantially adverse effect on the use or enjoyment of any abutting or adjacent dwelling or property, in particular:*

(a) The light and air available to neighboring properties shall not be unduly affected;

The subject deck is unenclosed, and has open safety railings. This design does not appear to negatively obstruct air available to neighboring properties.

The modest depth of the first-floor balcony is three feet and one-half inches and should not unduly obstruct light to neighboring properties.

(b) The privacy of use and enjoyment of neighboring properties shall not be unduly compromised;

To the north, there is separation between the subject property and adjacent property, which should minimize any potential privacy issues arising from the subject deck.

To the south, the rear walls of both the subject property and the adjacent property are flush together, which results in the subject deck extending past the adjacent rear wall. The subject deck is close to windows of the adjacent property which face east, away from the deck. Given the modest depth of the subject deck and the prevalence of decks in the RF-1 zone, this is not a condition that is unusual, or which unduly impacts privacy.

(c) The addition or accessory structure, 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;

The subject deck should not substantially visually intrude upon the pattern of houses along the subject street frontage, as it is located in the rear of the property facing a public alley. Further, numerous decks exist in the rear of neighboring row houses at the first story, and are visible from the public alley. Many of the adjacent decks facing the public alley appear to be similar in size to the subject deck, and in some cases, are slightly larger. There is a variety of construction materials used for the adjacent decks facing the public alley, including wood and metal. As such, the subject deck fits within the context of the existing alley-scape.

(d) In demonstrating compliance with paragraphs (a), (b), and (c) of this subsection, the applicant shall use graphical representations such as plans, photographs, or elevation and section drawings sufficient to represent the relationship of the proposed addition or accessory structure to adjacent buildings and views from public ways; and

The applicant submitted a survey, plans, and photographs to illustrate the subject deck and surroundings.

(e) The Board of Zoning Adjustment may approve lot occupancy of all new and existing structures on the lot up to a maximum of seventy percent (70%).

The applicant states that the lot occupancy with the legalization of the existing deck is 69.7 percent.

5201.4 *The Board of Zoning Adjustment may require special treatment in the way of design, screening, exterior or interior lighting, building materials, or other features for the protection of adjacent and nearby properties.*

No special treatment of the subject deck is recommended.

5201.5 *This section may not be used to permit the introduction or expansion of a nonconforming use as a special exception.*

The subject deck is a permitted use in the RF-1 zone.

5201.6 *This section shall not be used to permit the introduction or expansion of nonconforming height or number of stories as a special exception.*

The subject deck does not increase the number of stories or height of the subject property.

V. COMMENTS OF OTHER DISTRICT AGENCIES

Comments from DDOT state that the proposed special exception will not have an adverse impact on the District's transportation network. DDOT has no objection to the approval of the requested special exception relief (Exhibit 31).

VI. COMMUNITY COMMENTS

No comments from the community or the ANC were received at the time this report was drafted.

Attachment 1: Location Map 2825 11th Street, NW

