

February 7, 2020

Samantha L. Mazo

VIA IZIS

Direct Phone 202-747-0768
Direct Fax 202-683-9394
smazo@cozen.com

Frederick L. Hill, Chairperson
Board of Zoning Adjustment
441 4th Street, NW, Suite 210S
Washington, DC 20001

**Re: Application No. 20144 of David Barth and Lisa Kays (the “Applicant”) –
The Opposition Neighbors’ Response to Applicant’s Post Hearing Filings**

Chairperson Hill and Honorable Members of the Board:

The parties in opposition, Peter and Britt Bepler and Taylor and Sarah Nickel (collectively the “Neighbors”)¹ provide the following response to the Applicant’s recent filings at BZA Ex. No. 99A and 99B (collectively, the “Post-Hearing Plans”).

A. Neighbors’ Response to Post-Hearing Plans.

The Neighbors continue to oppose the Applicant’s 13.25’ addition and second-story, garage office proposal (the “Development”). The Development will result in a massing that will occupy 69.75% of the Applicant’s lot. The Neighbors appreciate the smaller windows shown in the Post Hearing Plans, but state that this very minor change does not result in any meaningful change that reduces the substantial impact of the Development on their respective properties.

1. As discussed at length during the public hearing on January 15, 2020, the rear addition as proposed will have undue impact on the light and sun of the Neighbors’ rear yards, particularly the Nickels’ permanent vegetable garden.²
2. The Applicant continues to propose a 13.25’ rear addition. The size of the 13.25’ rear addition far exceeds the size permitted as a matter-of-right. As Steven Mordfin from the Office of Planning testified and Mr. Barth admitted at the January 15, 2020 public hearing, a 3’-6” addition would be permitted as a matter of right if the garage is retained. As such, the

¹ As previously noted in the record, the Neighbors live in homes on both sides of the Applicant’s property. The Beplers own 1830 15th Street to the south, and the Nickels own 1834 to the north.

² Mr. Nickel testified that the Nickel’s permanent garden location was installed by the former owners who were professional botanists. Specifically, Mr. Nickel testified that the former owners “actually did the calculations in where the ideal spot for the maximum amount of sunlight, the maximum amount of growth was, and that’s why they actually installed a permanent garden box that can’t be moved.” (1/15/2020 Tr. 377 Lines: 17-21)

“Matter of right” shadow impact would be much smaller than what was shown by the Applicant. Rather, a proper illustration of the matter of right shadow impact is attached hereto at **Tab A**.

3. Further, OP expressly testified that a 10’ rear addition is not permitted as a matter-of-right because it exceeds the 60% permitted lot occupancy for the zone.³
4. Despite the newly proposed smaller windows in the Post Hearing Plans, the proposed 13.25’ rear addition will still have substantial and undue impact on the Neighbor’s privacy and enjoyment of their properties. Also, the Development would not be in harmony with the general purpose and intent of the Zoning Regulations, which are to “Preserve areas planned as open gardens and backyards and protect the light, air, and privacy” that they provide to properties in the RF-2 zone. See Subtitle E § 400.2(e).

Based on the above, the Neighbors continue to strongly oppose the Applicant’s request for special exception relief for the rear addition as proposed in the Post-Hearing Plans.

B. Neighbors are still willing to Compromise: Would Support a 10’ Rear Addition and Second-Story Garage Addition with windows shown in the Post-Hearing Plans.

Although unorthodox, the Neighbors are willing to offer another compromise option, beyond what they have already proposed to the Applicant, and even though the attempts to negotiate were not successful. Without going into much detail, compromise discussions between the Applicant and the Neighbors did not launch. Following the January 15, 2020 public hearing, the Neighbors started the negotiation process by writing a heartfelt letter directly to the Applicant (through counsel) detailing their willingness to discuss a compromise, including their willingness to support a 7’ or 8’ rear addition, which is double or more what the Applicant agreed was possible (3’6”) as matter of right. In this letter, the Neighbors clearly stated that they were “willing to consider counter-proposals.” Further, the Neighbors reiterated that they “really do want to figure this out and to find a solution we can all live with.” Unfortunately, in response, the Applicant only offered to reduce the addition by one-foot “in exchange for access to [the Neighbors’] property.”⁴ Without a compromise reached, and without proposing any counteroffer that did not include new conditions that further impose on the Neighbors’ properties, the Applicant continues to propose the 13.25’ rear addition shown in the Post-Hearing Plans.

But, even with this background, the Neighbors again make an offer to compromise. Keeping the second-story garage addition and newly-proposed windows, if the Board

³ “MR. MORDFIN: If the applicant built just 10 feet out instead of 13.25, then the lot occupancy would be something less than 69.75 whatever. CHAIRPERSON HILL: Right, but it would over 60 percent. MR. MORDFIN: It would be over 60 and therefore we would require --CHAIRPERSON HILL: They would have to come before us...” (1/15/2020 Tr: 379, Lines: 12-20).

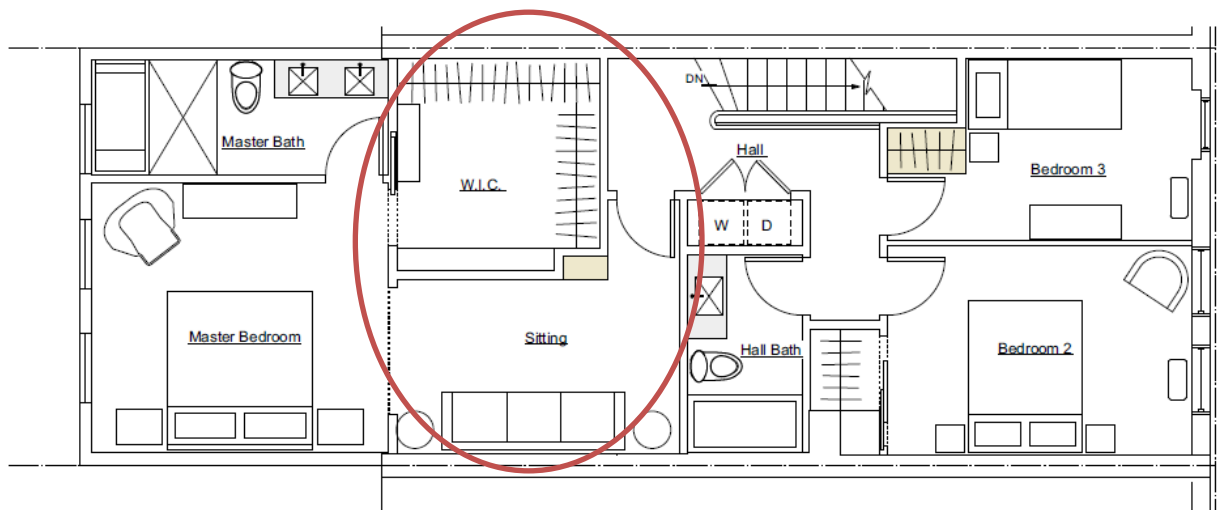
⁴ The Neighbors can provide copies of the correspondence to the Board at their request.

reduces (or the Applicant voluntarily agrees to reduce) the size of the rear addition to **10' instead** of 13.25', the Neighbors will withdraw their opposition.⁵ The Neighbors feel that the Development with a 10' rear addition (which would be 25% reduced from the current proposal) would still impact their properties.⁶ But in the spirit of compromise and working together as neighbors, they would be willing to live with such impacts. As confirmed by OP, with the second-story garage addition, this proposed 10' addition would still require zoning relief.

Further, the Neighbors believe that a 10' rear addition would more than meet the stated mission of the Applicant's requested relief to add a third bedroom on the top floor.

By way of background, the Development removes structural walls, includes two separate offices, as well two washer-dryers, and separate basement and second floor sitting areas. Reducing the rear addition to 10' would be a minor reduction of only 3.25' and would not negatively impact the Applicant's plans, while it would represent an important protection of the Neighbors' properties.⁷ As shown in the snip below of the Applicant's Post-Hearing Plans, even with reducing the size of the rear addition by 3.25', there would still be room for two bedrooms in the front and as well as a sizable, rear master bedroom if there were minor adjustments to the currently proposed walk-in closet and sitting room area, which are now approximately 9' long x 18'3" wide.⁸

Second Floor, BZA Ex. No. 99A, Sheet A1.01



⁵ Pursuant to Subtitle E § 5201.4, the Board can condition its approval of the Application on a 10-foot addition.

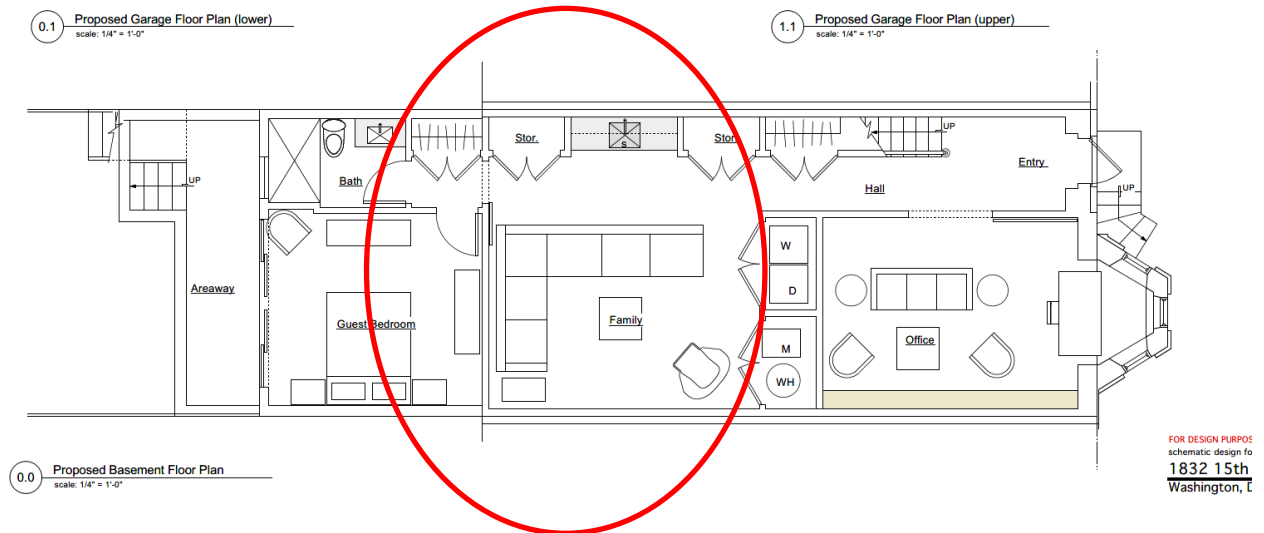
⁶ The Neighbors' proposed 10-foot addition would still require zoning relief as it would be approximately 66% lot occupancy. A 10' addition is still approximately 300% more than what the Applicants can do as a matter of right.

⁷ The Applicant has repeatedly raised the reasons for their preferred design as part of their special exception relief request. The Neighbors raise these issues because they strongly assert that a minor reduction (3.25') would result in a compromise that would allow for the Applicant's design/purpose goals to be accomplished while reducing the undue impacts on the Neighbors.

⁸ The Applicant did not identify the size of these spaces, so all dimensions are estimates scaled by the Neighbors.

Further, as shown in the snip below of the proposed basement, it appears that a large office would still be possible on the basement level with the rear addition reduced to 10-feet. There appears to be sufficient room to slightly decrease the proposed basement sitting area, entry area, and office area to accommodate a 3.25' decrease.⁹

Basement Level Office, BZA Ex. No. 99A, Sheet A1.00



Although unorthodox, given the context and the substantial evidence in the record regarding the Development's undue impacts on the Neighbors' light and air and privacy and enjoyment, and the Neighbors' continued and documented attempts to find compromise with the Applicants, the Neighbors respectfully request that the Applicant and the Board seriously consider this 10' compromise request.

Without this compromise, the Neighbors would have no choice but to continue to oppose the requested relief and continue to request that the Board deny this application. Thank you for your attention to this matter.

Sincerely,

COZEN O'CONNOR

BY: SAMANTHA L. MAZO

⁹ While the Applicant claims that they are not moving their professional offices to their home, it appears that 1/3 of the basement and the entire garage loft will be converted into large offices. Also, the large area adjacent to the basement level office appears to have enough room for a waiting area.

CERTIFICATE OF SERVICE

I hereby certify that on February 7, 2020, I had served a copy of the Opposition Neighbors' Response to Applicant's Post Hearing Filings via e-mail, to the following:

David Barth and Lisa Kays
c/o Martin P. Sullivan
1155 15th street NW, Suite 1003
Washington, DC 20016
msullivan@sullivanbarros.com

District of Columbia Office of Planning
1100 4th Street, SW, Suite E650
Washington, DC 20024
stephen.mordfin@dc.gov

District Department of Transportation
55 M Street SE, Suite 400
Washington, DC 20003
Aaron.zimmerman@dc.gov

Advisory Neighborhood Commission 2B
c/o Daniel Warwick, Chairperson
2B02@anc.dc.gov

Advisory Neighborhood Commission 2B
Ed Hanlon, Commissioner, SMD 2B09
2B09@anc.dc.gov



By: Samantha L. Mazo