


## MEMORANDUM

**TO:** District of Columbia Board of Zoning Adjustment

**FROM:** Michael Jurkovic, AICP, Development Review Specialist  
 Joel Lawson, Associate Director Development Review

**DATE:** December 11, 2024

**SUBJECT:** BZA Case 21167, Request for special exception relief to permit the expansion of a nonconforming structure at 527 Florida Avenue, NW.

### **I. BACKGROUND**

The Applicant wishes to provide a second story deck for outdoor recreation at the rear of a mixed-use building in the MU-4 zone. The applicant originally requested an area variance for lot occupancy as well as a special exception from the required rear yard development requirements. In a preliminary report at Exhibit 30, OP noted that we had raised concerns about the nature and type of relief requested, and that the issues had not been addressed by the applicant. Immediately prior to the hearing date, the applicant provided supplemental filings at Exhibits 33 through 37, with amended relief request, principally to remove a previously requested variance request from lot occupancy. At its December 4, 2024 public hearing, the BZA continued the hearing to December 18, 2024, and requested an additional report from OP providing analysis of the amended relief request.

### **II. OFFICE OF PLANNING RECOMMENDATION**

The Office of Planning (OP) recommends **approval** of the following special exception relief pursuant to Subtitle G § 5200 and X § 901:

- Subtitle C § 202.2, Non-conforming Structure Requirements
- Subtitle G § 210.1, Maximum Residential Lot Occupancy (60% maximum permitted; 75% existing 1<sup>st</sup> & 2<sup>nd</sup> Story; 83% 2<sup>nd</sup> story proposed)
- Subtitle G § 207, Required Rear Yard (Minimum 15 ft. required; 17.56 ft. existing; 9.56 ft. proposed)

### **III. LOCATION AND SITE DESCRIPTION**

Address	527 Florida Avenue, NW
Applicant	Olutoye Bello on behalf of Behzad Hosseinkhani Trustee
Legal Description	Square 3093: Lot 0029
Ward, ANC	Ward 1; ANC 1B
Zone	MU-4, moderate density mixed-use zone
Historic District	LeDroit Park Historic District

Lot Characteristics	Irregularly shaped interior lot measuring 18.0 ft. x 77.56 ft. with an 18.0 ft. x 4.0 ft. dogleg to a 12 ft. public alleyway to the rear.
Existing Development	Mixed-Use Row Building
Adjacent Properties	Mixed-Use Row Buildings
Surrounding Neighborhood Character	Moderate Density Mixed Use Corridor with Residential to the North.

#### IV. ZONING REQUIREMENTS and RELIEF REQUESTED

Zone- MU-4	Regulation	Existing	Proposed <sup>1</sup>	Relief
Density G § 201	Max. total FAR: 2.5 or 3.0 (IZ)	1.59	2.5	None Requested
Height G § 203	50 ft. max.	37 ft.	No Change	None Requested
<b>Rear Yard G § 207</b>	<b>15 ft. min.</b>	<b>17.56 ft.</b>	<b>9.56 ft.</b>	<b>Relief Requested</b>
<b>Lot Occupancy G § 210</b>	<b>Residential: 60% max. or 75% (IZ) Non-Residential: No max.</b>	<b>Residential: 75% 1<sup>st</sup> and 2<sup>nd</sup> story.  Non-Residential: 75% Cellar</b>	<b>Residential: 83% 2<sup>nd</sup> Story;  75% cellar and 1<sup>st</sup> story.</b>	<b>Relief Requested</b>
Parking C § 701	1 per two dwelling units.	0	No Change	None Requested

#### V. OP ANALYSIS

##### Subtitle C § 202.2 NONCONFORMING STRUCTURES

*Enlargements or additions may be made to the structure; provided that the addition or enlargement itself shall:*

- Conform to the use and development standards;*
- Neither increase nor extend any existing, nonconforming aspect of the structure; nor create any new nonconformity of structure and addition combined; and*
- Any enlargement or addition not meeting paragraphs (a) and (b) must obtain relief from the applicable development standards.*

The applicant is requesting relief to increase the existing nonconforming lot occupancy and to the minimum rear yard development requirement, which may be sought through special exception. Analysis of the requested relief is provided below.

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<sup>1</sup> Provided by the applicant.

### **Subtitle G § 5200 RELIEF FROM REQUIRED DEVELOPMENT STANDARDS**

*5200.1 Except for density, height, and penthouse and rooftop structure, the Board of Zoning Adjustment may grant relief from the development standards of this subtitle, as a special exception subject to the criteria at Subtitle X, Chapter 9.*

Requested relief to the maximum lot occupancy and minimum required rear yard is allowed through special exception.

*5200.2 Requested relief that does not comply with specific conditions or limitations of a special exception authorized by this subtitle shall be processed as a variance pursuant to Subtitle X, Chapter 10.*

The requested relief to the maximum residential lot occupancy in the MU-4 zone has no specific conditions other than the criteria of Subtitle X Section 901.2. For the requested rear yard relief, additional review of specific criteria of Subtitle G § 207.14 is provided below.

### **Subtitle X Section 901 SPECIAL EXCEPTION REVIEW STANDARDS**

*901.2 The Board of Zoning Adjustment is authorized under § 8 of the Zoning Act, D.C. Official Code § 6-641.07(g)(2), to grant special exceptions, as provided in this title, where, in the judgment of the Board of Zoning Adjustment, the special exceptions:*

- (a) Will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps;*

The proposed addition of a rear deck for the residential use would generally meet the purpose and intent of the MU-4 zone. The relief to lot occupancy and rear yard provisions would not result in a building that would be inconsistent with the use or bulk provisions of the regulations, and is permitted by special exception.

- (b) Will not tend to affect adversely, the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps; and*

The relief would not result in new windows which would create significant privacy impacts. The proposed increase to the second story lot occupancy nonconformity would be solely for an open deck, which is intended to provide outdoor recreation space for a residential use, and should not result in any significant impact to the light and air available to neighboring properties. There should not be an impact to privacy more than that already exists, or could be accomplished by-right. Therefore, the proposed addition should not cause substantial detriment to the public good.

- (c) Subject in specific cases to the special conditions specified in this title.*

The form of relief is within the allowed criteria of D § 5200 and G § 207.14, provided above.

### **Subtitle G § 207 REAR YARD RELIEF REVIEW CRITERIA**

*207.14 Relief from the rear yard requirements of Subtitle G § 207 may be permitted if approved by the Board of Zoning Adjustment as a special exception pursuant to Subtitle X, Chapter 9, and subject to the following conditions:*

- a. *No apartment window shall be located within forty feet (40 ft.) directly in front of another building;*

Per the applicant, the application is not introducing or altering the position of any windows.

- b. *No office window shall be located within thirty feet (30 ft.) directly in front of another office window, nor eighteen feet (18 ft.) in front of a blank wall;*

No window associated with an office use is proposed with this application.

- c. *In buildings that are not parallel to the adjacent buildings, the angle of sight lines and the distance of penetration of sight lines into habitable rooms shall be considered in determining distances between windows and appropriate yards;*

The proposed deck addition would be parallel with the adjoining buildings and no new windows are proposed.

- d. *Provision shall be included for service functions, including parking and loading access and adequate loading areas;*

Not applicable, per the applicant the proposed addition would not introduce additional parking or loading requirements.

- e. *Upon receiving an application for relief from rear yard requirements of this section, the Board of Zoning Adjustment shall submit the application to the Office of Planning for coordination, review, report, and impact assessment, along with coordination of reviews in writing from all relevant District of Columbia departments and agencies, including:*

*(1) The District Department of Transportation;*

*(2) The Department of Housing and Community Development; and*

*(3) The Historic Preservation Office if the application involves a historic district or historic landmark.*

The application has been reviewed by DDOT who has informed OP that they have no objection to the application.

This project was presented to HPO as a permit application prior to referral to BZA for relief. HPO approved the building permit application for a 10 ft. x18 ft. rear deck at the second floor on 11/2/23.

## **VI. OTHER DISTRICT AGENCIES**

DDOT has informed OP that they have no objection to the requested relief and will not be providing a report to the record.

## **VII. ADVISORY NEIGHBORHOOD COMMISSION**

ANC 1B has provided a report recommending approval at Exhibit 38, and at Exhibit 39 is a letter from ANC SMD 1B09. A memo from ANC 2G is at Exhibit 40 indicating that this project does not impact their ANC

## VIII. COMMUNITY COMMENTS TO DATE

At Exhibit #29, the applicant has submitted several letters that note no objection or indicate support of the application.

Attachment: Location Map

