

BZA Case No. 21205

3730 Windom Pl NW

Presentation by Party in Opposition, Attached Neighbors

December 11, 2024

Overview

- The existing addition at 3730 Windom Pl exceeds the lot occupancy limit and is an outlier compared to neighboring homes.
- We are concerned that the proposed project will further exacerbate the boxed-in impact of this property and reduce our privacy.
- Given that the application does not address why the existing addition exceeds the lot occupancy limit, it cannot proceed as drafted.

Background

- Our house is attached to the applicants' property.
- The current property has an addition that extends approximately 12' from the back of our house and is about 25' wide; the addition eliminated the dog leg and was built directly along our shared property line.
- The proposed project that will add a garage door under the house to accommodate parking for a second car, expand the width and length of the existing elevated deck to allow parking underneath for a third car, increase the elevated deck size to a total of 13' x 24'4", and add a retaining wall directly along our shared property line.
- The floor, railing, and users of the structure would rise above the standard fenceline of 7'.
- The existing addition has a lot occupancy of 44%. This application seeks a lot occupancy of 49.5% and rear yard setback of 15.2'.

Law and Burden of Proof Standard

- For the R-2 Zone, the lot occupancy limit is 40% and rear yard setback requirement is 20'. The applicants' burden of proof for obtaining a special exception from these requirements is provided in Subtitle D- 5201.4.
- The special exception procedures are provided in Subtitle X, Chapter 9, including standards for how special exception relief applies to expansions of noncompliant structures that were lawfully built and permitted:
 - X-900.3 In the case of a use that was originally permitted and lawfully established as a matter-of-right and for which the Zoning Regulations now require special exception approval from the Board of Zoning Adjustment, any extension or enlargement of that use shall require special exception approval from the Board of Zoning Adjustment.
 - X-900.4 In determining whether to approve any extension or enlargement under Subtitle X § 900.3, the Board of Zoning Adjustment shall apply the standards and criteria of the Zoning Regulations to the entire use, rather than to just the proposed extension or enlargement.

The application does not meet the procedural or substantive burden for the requested special exceptions.

As a threshold matter, the application does not address why the current property exceeds the lot occupancy limit

- The current property exceeds the lot occupancy limit of 40%; it has a lot occupancy of 44%.
- There is no information on the record addressing why the existing structure is over the lot occupancy limit, whether or when the existing structure was granted relief from the lot occupancy limit, or otherwise establishing that the special exception provision can apply to the increased lot occupancy introduced by the proposed structure.
- Applying the special exception provisions to this current application would be a mistake of law and policy.
 - Without meeting its burden to show that the current property is conforming or otherwise obtained appropriate relief, the application cannot meet the standard for special exceptions in Subtitle X, Chapter 9 or Subtitle Y-300.8.
 - Accordingly, the application has not met its burden to show that the special exception provision can apply to this property, and the current application cannot proceed as drafted.

The application has not met its burden given that it only addresses the proposed extension of the existing noncompliant structure, rather than the entire noncompliant structure

- In deciding whether to approve an extension or enlargement of a lawfully established structure that now violates the Zoning Code, the BZA “shall apply the standards and criteria of the Zoning Regulations to the entire use, rather than to just the proposed extension or enlargement.” Subtitle X-900.4.
- The current property exceeds the lot occupancy limit, and the proposed structure would further that noncompliance.
- Given that the application does not address the undue adverse impact of the entire noncompliant structure or otherwise explain why the structure is noncompliant, the application cannot move forward as drafted.

The application has not met its burden to demonstrate that the proposed structure is consistent with other homes in the neighborhood

- The neighboring homes all have similar or identical lots with additions, decks, low patios, or a combination thereof. However, the lot occupancy and set back of this property would be an outlier.



The applicants have not met their burden to demonstrate that the structure would not unduly effect our abutting dwelling, including light and air available and privacy of use and enjoyment under D- 5201.4

- Elevated, Potentially Enclosed Deck Above the Fenceline
 - We estimate that the outermost portion of the deck is 12' high including the railing, and 9' high without. Our understanding is that the maximum residential yard fence height in DC is 7'.
 - Accordingly, the floor of the deck, a portion of any enclosed siding, and individuals using the deck will be well above the standard fenceline and visible from our property.
- Light and Air
 - Because the elevated deck is so high, potentially enclosed on the sides, and extends towards the back and side edges of the lot, it would unduly affect the experience and light and air in our yard in a manner similar to an addition.
 - This boxed-in feel would result from most of the yard being built out with elevated structures; the current property covers 44% of the lot and has an addition that extends approximately 12' past the back of our house; the application states that proposed addition would increase lot coverage to 49.5% with a 15.2' rear setback.

The applicants have not met their burden to demonstrate that the structure would not unduly effect our abutting dwelling, including light and air available and privacy of use and enjoyment (cont'd)

- Privacy

In response to its burden for the privacy implications of this project, the application states:

“The proposed Addition is an expansion of what currently exists. Accordingly, the Addition will not unduly compromise the privacy of use and enjoyment of neighboring properties.”

Applicant's Statement, Exhibit 9 p.3.

- This reasoning is problematic as it would mean that no expansion can have a negative privacy impact.
- It also is incorrect as a matter of law, as an application for a special exception cannot rely on a noncompliant structure to justify furthering such noncompliance.
- Given that the elevated deck is so high and protrudes toward the back of the lot, it would provide direct, unobstructed, and close lines of sight into the back of our home, which we consider a substantial adverse effect.

The applicants have not met their burden to demonstrate that the structure would not unduly effect our abutting dwelling, including light and air available and privacy of use and enjoyment (cont'd)

- Privacy

The estimated 12' high deck structure would hover approximately 5' above the max fence line of 7', providing users of the deck with full visibility above any property fences and into our home. These direct sight lines are illustrated below in the DC 3D Zoning Map "line of sight" tool.



A privacy screen would not address out concerns as it would effectively create a wall and exacerbate the boxed-in effect of the enlarged structure, especially since the structure is highly elevated and has at least 9' of deck that run directly along the shared property line. There are also stairs that run directly along the shared property line, providing users with a view into the house.

Conclusion

- We are concerned that the existing addition is unusually oversized and imposing on our home, and the proposed structure would further extend and exacerbate these negative impacts on us.
- The current application has not addressed why the current structure exceeds the lot occupancy limit.
- Allowing this application to move forward as drafted would be a mistake of law and policy as it would reward disregard of the Zoning Code and BZA, permitting property owners to use noncompliant properties to justify further noncompliance and increase negative impacts without proper evaluation.

Thank you for considering this testimony.