

## MEMORANDUM

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

**FROM:** Joshua Mitchum, Development Review Specialist  
Joel Lawson, Associate Director Development Review

**DATE:** January 24, 2025

**SUBJECT:** BZA Case 21222: Request for special exception relief to allow a rear deck addition at 5001 4<sup>th</sup> Street NW.

### **I. OFFICE OF PLANNING RECOMMENDATION**

The Office of Planning (OP) recommends **approval** of the following area variance pursuant to Subtitle X § 1002:

- Lot Occupancy D § 207 (40% permitted or 70% by special exception; 65% existing; 84% proposed)

Although OP does not consider the applicant's argument in support of area variance relief to be a strong one, if it is accepted that on-site outdoor space is a customary and anticipated use for a dwelling, then the site exhibits some circumstances which, together, result in a practical difficulty in achieving this, and the proposed deck should not have an undue impact on neighbors, or, in this case, on the purpose and intent of the zoning regulations.

OP recommends **approval** of the following special exception pursuant to Subtitle D § 5201 and Subtitle X § 901:

- Rear Yard D § (20 ft. required, 25 ft. existing; 9 ft. proposed)

### **II. LOCATION AND SITE DESCRIPTION**

Address	5001 4 <sup>th</sup> Street NW
Applicants	Ester Kahng and Corey Martin
Legal Description	Square 3302, Lot 21
Ward, ANC	Ward 4; ANC 4D
Zone	R-3
Historic Districts	N/A
Lot Characteristics	The 1,700 square foot corner lot is rectangular in shape with 20 feet of frontage along 4 <sup>th</sup> Street, NW. The right-side yard of the lot, which is 85 feet in length, abuts Farragut Street NW. The rear of the lot, which is 20 feet in width, abuts a 15-foot-wide public alley. The property slopes up from the alley to the street.

Existing Development	The lot is currently improved with a two-story, semi-detached principal dwelling unit with a cellar, and a large covered front porch. At the rear of the lot, there is a parking pad and an open rear stair and landing up to the main level of the house.
Adjacent Properties	Single family row dwellings.
Surrounding Neighborhood Character	The surrounding neighborhood character is low to moderate-density residential development that consists of predominately single-family row dwellings.
Proposed Development	The applicant proposes to construct a rear deck addition off the first floor of the house.

### III. ZONING REQUIREMENTS and RELIEF REQUESTED

R Zone	Regulation	Existing	Proposed	Relief
Lot Width D § 202 (302)	20 ft. min.	20 ft.	No change	None requested
Lot Area D § 202	2,000 sq.ft. min.	1,700 sq.ft.	No change	None requested
Height D § 203	40 ft; 3 stories max.	Not provided	No change	None requested
Rear Yard D § 207	20 ft. min.	25 ft.	9 ft.	<b>Relief requested</b>
Side Yard D § 207	None required, 5 ft/ minimum if provided	0 ft.	0 ft.	None requested
Lot Occupancy D § 210	60% max. by right 70% by sp.ex.	65%	84%	<b>Relief requested</b>
Parking C § 701	1 space per principal dwelling unit.	1 space	No change	None requested

### IV. OP ANALYSIS

#### a. Subtitle X Section 1000 AREA VARIANCE GENERAL PROVISIONS

*1000.1 With respect to variances, the Board of Zoning Adjustment has the power under § 8 of the Zoning Act, D.C. Official Code § 6-641.07(g)(3) (formerly codified at D.C. Official Code § 5-424(g)(3) (2012 Repl.)), "[w]here, by reason of exceptional narrowness, shallowness, or shape of a specific piece of property at the time of the original adoption of the regulations, or by reason of exceptional topographical conditions or other extraordinary or exceptional situation or condition of a specific piece of property, the strict application of any regulation adopted under D.C. Official Code §§ 6-641.01 to 6-651.02 would result in peculiar and exceptional practical difficulties to or exceptional*

*and undue hardship upon the owner of the property, to authorize, upon an appeal relating to the property, a variance from the strict application so as to relieve the difficulties or hardship; provided, that the relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map."*

***Extraordinary or Exceptional Situation or Condition Resulting in Practical Difficulty***

***a. Extraordinary or Exceptional Situation***

The DC Court of Appeals has found that exceptional conditions that are common to multiple lots in proximity to one another can be part of meeting the variance test through a "confluence of factors", but that an applicant must demonstrate that the property in question exhibits an exceptional or extraordinary condition unique to their property in order to be granted an area variance.

In this case, the applicant cites lot size and topography as unique circumstances. Although the subject property was created prior to the current zoning regulations, at 1,700 sq.ft. it is not significantly smaller than the currently required lot area for this zone (2,000 sq.ft.). The property is similar in size or larger than most other lots on this square facing 4<sup>th</sup> Street NW or 3<sup>rd</sup> Street NW, but is smaller than lots on the square fronting Gallatin or Emerson Streets, as those lots are much deeper. The application does not include a site section or topographic plan, so it is difficult to determine the slope on the lot, but it does appear that it and other lots facing 4<sup>th</sup> Street NW slope down from the street to the alley. This, plus the ground floor of the house being raised above grade, means that the proposed deck would be well above the grade at the rear, and counts towards lot occupancy. This is not a unique circumstance on the block, or throughout DC.

However, the applicant notes that the deck would be located above the existing paved parking pad. Although a parking pad does not count towards lot occupancy, a conforming deck (one not counting towards lot occupancy by being no more than four feet above grade, or open space at grade would essentially result in the need to eliminate the parking space. As such, having the deck at the main floor level of the house (about 8.5 ft. above grade) allows the retention and continued use of the parking pad. Removal of the parking pad to accommodate a usable rear yard or a deck that would not count towards lot occupancy would require different, special exception relief.

***b. Exceptional Practical Difficulties***

To obtain variance relief, the applicant must demonstrate exceptional practical difficulties caused by an extraordinary or exceptional condition unique to the property. If it is accepted that a rear deck or usable rear yard is a normal and customary feature of a dwelling, then the practical difficulty would be that the rear yard is currently mainly used to provide a required parking space from the alley (along with a stair and landing to the main floor level of the house), and there is no reasonable alternative to the owner to provide conforming usable open space to the rear of the house without removal of the parking space. As noted above, removal of the parking space would require different relief from the zoning regulations (Subtitle C § 701.14).

***No Substantial Detriment to the Public Good***

The requested increase in lot occupancy for the rear deck would not likely be a substantial detriment to the public good. The proposed deck would be visible from Emerson Street, but would be off the main level (rather than upper level) of the house, and should not negatively impact the public way.

It would face towards the sides of the house to the east, which fronts onto Emerson Street. While that building includes windows along its side wall, the proposed deck would be separated by the alley and the remaining rear yard, providing adequate separation.

***No Substantial Impairment to the Intent, Purpose, and Integrity of the Zoning Regulations***

In this case, the building was constructed prior to the 1958 Zoning Regulations and is already a nonconforming building in the R-3 zone for lot occupancy. The proposed increase in lot occupancy would allow for a new rear deck, to be located over an existing parking pad. The deck would not result in additional lot imperviousness, should not result in a building form, bulk height or use unanticipated in zoning, and should not appear as an over-development of the site on the block. As such, in this instance, the proposal would not appear to result in significant impairment to the intent or integrity of the R-3 zone.

**b. Subtitle D § 5201 ADDITION TO A BUILDING OR ACCESSORY STRUCTURE**

*5201.1 For an addition to a principal residential building with one (1) principal dwelling unit on a non-alley lot or for a new principal residential building on a substandard non-alley record lot as described by Subtitle C § 301.1, the Board of Zoning Adjustment may grant relief from the following development standards of this subtitle as a special exception, subject to the provisions of this section and the general special exception criteria at Subtitle X, Chapter 9:*

*(a) Lot occupancy subject to the following table:*

**TABLE D § 5201.1(a): MAXIMUM PERMITTED LOT OCCUPANCY BY SPECIAL EXCEPTION**

<b>Zones</b>	<b>Type of Structure</b>	<b>Maximum Percentage of Lot Occupancy (%)</b>
All R-3 zones except R-3/GT	All Structures	70
R-3/GT	Row	
R-3/GT	Detached Semi-detached	50
All other R zones	All Structures	

*(b) Yards, including alley centerline setback; and*

*(c) Pervious surface.*

The Applicant has requested area variance relief from lot occupancy (analyzed above) and special exception relief from rear yard setbacks as permitted by this section.

*5201.2 and 5201.3 Not applicable to this application.*

*5201.4 An application for special exception relief under this section shall demonstrate that the proposed addition, new principal building, or accessory structure shall not have a substantially adverse effect on the use or enjoyment of any abutting or adjacent dwelling or property, specifically:*

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

The proposed rear-yard deck would not appear to unduly affect the light and air available to neighboring properties. The uncovered, open deck would be off the main level of the house and would be uncovered. It would retain the parking area underneath, so would allow for light and air for both the subject property and neighboring properties.

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

The proposed rear yard deck should not unduly compromise the privacy of use and enjoyment of neighboring properties. The deck would face directly into the side of a neighboring property, but this occurs across the rear yard and the existing 15-foot-wide public alley, so does not appear to represent a substantial loss of privacy. While some of the other lots on this square already have rear decks, the adjacent property to the north does not, although it has a stair and landing to the main level. Potential privacy or use of their rear yard should not be unduly impacted.

- (c) *The proposed addition or accessory structure, together with the original building, or the new principal 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 street or alley frontage; and*

The proposed rear yard deck would be visible from both the street and the alley, but at 8.5 ft above grade, it should not substantially visually intrude upon the character, scale and pattern of houses along the street or alley frontage. There are similar looking decks in the rear yards of some other properties in the area.

- (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.*

Adequate plans, elevations, and photographs have been submitted separately into the record as Exhibits 2, 3, and 6.

*5201.5 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.*

OP does not recommend additional treatment for the protection of nearby properties for the subject application. Should the neighbor to the north express privacy concerns, the applicant might consider the addition of screening along the north wall of the deck, although this could also impact light and air flow to that lot to a greater degree.

*5201.6 This section shall not be used to permit the introduction or expansion of a nonconforming use, lot occupancy beyond what is authorized in this section, height, or number of stories as a special exception.*

The subject application does not request the introduction or expansion of non-conforming

uses, and the applicant has requested relief from the lot occupancy limit. The proposed rear yard deck serves as an addition to the existing residential use, which would not change as a result.

## **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 rear yard deck would be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps because it would not result in a structure that would be inconsistent with the R-3 Zone in terms of bulk, use, or height.

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

As discussed, the proposed rear yard deck should not adversely affect the use of neighboring properties. The deck is similar to other existing decks in the neighborhood and would not compromise the privacy of use and enjoyment of adjacent properties.

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

Special conditions have not been specified for the subject application.

## **V. OTHER DISTRICT AGENCIES**

DDOT has advised OP that they have reviewed the subject application and have no objection to the approval of the special exception. As of the date of this report, comments from other District agencies have not been received or added to the record.

## **VI. ADVISORY NEIGHBORHOOD COMMISSION**

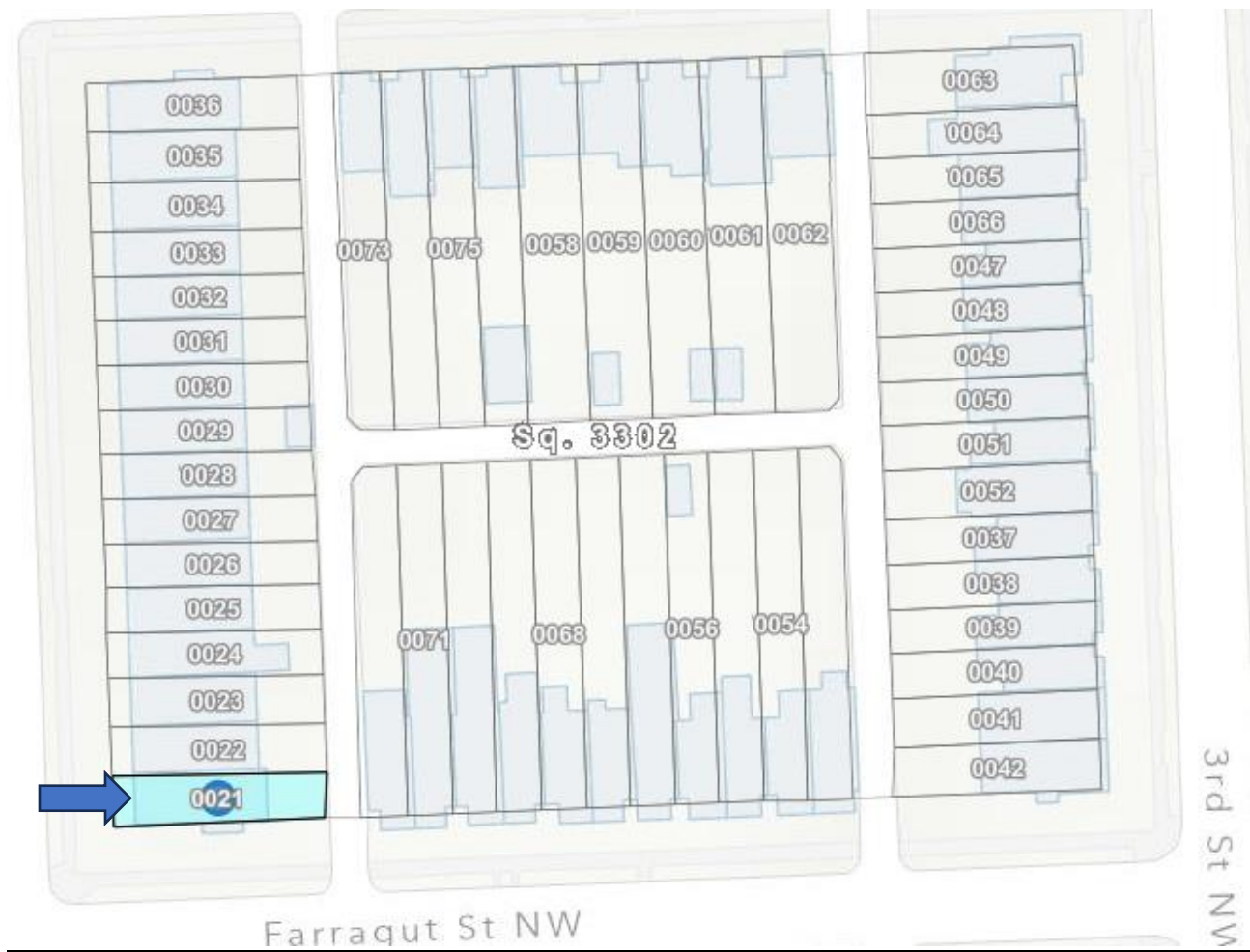
As of the date of this report, ANC comments had not been filed to the record.

## **VII. COMMUNITY COMMENTS**

As of the date of this report, no community comments have been submitted into the record regarding the subject application.

Attachment: Location Map

**Location Map:**



Attachment: Location Map (the blue arrow indicates the subject property)