

## MEMORANDUM

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

**FROM:** Philip Bradford, AICP, Development Review Specialist  
*JL for* Joel Lawson, Associate Director Development Review

**DATE:** March 14, 2025

**SUBJECT:** BZA Case 21243: Request for area variance and special exception relief to allow a rear deck addition at 5322 41<sup>st</sup> Street NW.

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

The Office of Planning (OP) recommends **approval** of the following area variance relief:

- Subtitle D § 210.1 pursuant to Subtitle X § 1000.1 – Lot Occupancy (40% maximum by-right or 50% by special exception; 55% existing; 70.3% proposed)

OP also recommends **approval** of the following special exception relief:

- Subtitle D § 208.7, pursuant to Subtitle D § 5201 and Subtitle X § 901.2 – Side Yard (5 ft. required, 0 ft. existing; 1 ft. proposed)

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

Address	5322 41 <sup>st</sup> Street NW
Applicants	City Permit on behalf of Thomas and Kathleen Quinn
Legal Description	Square 1742, Lot 0053
Ward, ANC	Ward 3; ANC 3E
Zone	R-2, low density residential permitted detached and semi-detached dwellings
Lot Characteristics	Rectangular 19 ft. wide by approximately 104 ft. long through lot with frontage on 41 <sup>st</sup> Street NW to the east and Belt Road NW to the west.
Existing Development	Single unit row dwelling, a form not permitted in this zone. The existing house is non-conforming for lot occupancy and side yard. Relief for the property was approved by the BZA in Case 13662 (1982), for a smaller rear deck.
Adjacent Properties	Adjacent properties are improved with single unit row, semi-detached, and detached houses.
Surrounding Neighborhood Character	Low density residential in character with higher densities and mixed-use development to the west along Wisconsin Ave NW.
Proposed Development	Rear deck removal and replacement with larger deck.

### III. ZONING REQUIREMENTS and RELIEF REQUESTED

R Zone	Regulation	Existing	Proposed	Relief
Lot Width D § 202 (302)	40 ft. min.	19 ft.	No change	None required
Lot Area D § 202	4,000 sq.ft. min.	1,936 sq.ft.	No change	None required
Rear Yard D § 207	20 ft. min.	45.3 ft.	33.3ft.	None required
Side Yard D § 207	5 ft. min.	0 ft.	1 ft.	<b>Special Exception requested</b>
Lot Occupancy D § 210	40% max. by right 50% max. by sp.ex.	55% <sup>1</sup>	70.3%	<b>Area Variance requested</b>
Pervious Surface D § 211	20% min.	43%	30 %	None required
Parking C § 701	1 min.	0	No change	None required

### IV. OP ANALYSIS

#### Subtitle X Section 1000 (AREA) VARIANCE GENERAL PROVISIONS – LOT OCCUPANCY

*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."*

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<sup>1</sup> The memo from the Zoning Administrator at Exhibit 24A states that the existing lot occupancy is 55%; the applicant filings at Exhibit 14 state that the existing lot occupancy is 62.8%. OP rough calculations indicated that the existing lot occupancy appears to be consistent with the Zoning Administrator number of 55%. Both numbers exceed the amount of lot occupancy permitted by right or by special exception.

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

#### ***Extraordinary or Exceptional Situation***

The applicant is faced with an exceptional situation in that many aspects of the subject property are non-conforming and pre-date DC zoning, such as the row building form, the lot width, and lot area. The existing building was constructed in 1917 and exceeds the current maximum lot occupancy permitted by-right or by special exception, and does not provide a side yard as now required by the zone. The subject property was previously granted relief in Cases 13093 (1980) and 13662 (1982) for a smaller deck addition. The property also slopes down, from front (41<sup>st</sup> Street) to rear (Belt Road), such that the main floor is well above grade level at the rear.

#### ***Resulting in Practical Difficulty***

The current situation - both the lot and the dwelling on it - appears to result in a practical difficulty to the owner, in that any replacement of the existing deck would require lot occupancy area variance relief. The proposed deck would be constructed at the main floor level of the house, similar to the existing one, which, due to the change in grade, is well above the ground level, meaning that the deck would count towards lot occupancy.

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

Granting the requested relief should not result in a substantial detriment to the public good. Many of the adjacent properties have similar or larger rear decks, so the proposed deck would not be inconsistent with the character along Belt Road NW. Although elevated above grade, it would be at the level of the main floor, so impacts on light or privacy for neighbors should be minimal.

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

The proposed area variance relief would, in this case, not substantially impair the intent, purpose, or integrity of the Zoning Regulations. The area variance procedure exists for circumstances such as this, where an unusual or exceptional condition creates a practical difficulty for an owner. Variance relief was granted by the BZA in the past for a rear deck at this site, although the current proposal is larger than the deck previously approved. Due to the nonconforming building size and type and the lot dimensions, any changes to the deck would require area variance relief.

The lot occupancy limitation for this zone is intended to regulate the potential footprint of construction on medium sized lots, anticipating rear and side yards. In this case, the original and existing building type and size, as well as the lot size are not what is anticipated by the zone- the lot is much smaller, and the house has no side yard. Rather, the lot and dwelling are generally consistent with zones that would allow a 70% lot occupancy by special exception, which is approximately what is requested with this proposal. The area variance for the unenclosed and uncovered deck would also not result in a structure that has a height, bulk, or intensity of use that is greater than what is existing, or what is intended in the zone, and close to 1/3 of the lot would remain open space. As such, the proposed deck, in this case, would not result in a substantial impairment to the intent, purpose, or integrity of the zoning regulations.

### **Subtitle D § 5201 ADDITION TO A BUILDING OR ACCESSORY STRUCTURE – SIDE YARD**

*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**

Zones	Type of Structure	Maximum Percentage of Lot Occupancy (%)
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 special exception relief for extending the existing nonconforming side yard. The side yard is currently 0 ft. as this is a nonconforming row dwelling in the R-2 zone. The applicant requires relief for the side yard as the proposed deck, like the existing one, would be located within the side yard of the home, setback 1 foot from the property line instead of the required minimum of 5 feet.

*5201.2 & 5201.3 not relevant 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 new uncovered deck should not have an undue impact on light and air available to neighboring properties. Multiple neighboring properties have similar sized decks in similar locations on their respective lots as shown in Exhibit 15. The open deck design should not hinder air flow or light to adjacent properties. Significant landscaping along the Belt Road NW frontage limits any significant changes to light and air in this location.

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

The proposed deck should not unduly compromise the privacy and use of enjoyment of neighboring properties. While the deck would be partially built in the side yard of the home, most of the lots within the square, including the subject property, are through lots with the rear yard used for parking. Many other neighboring properties contain similar or larger decks.

*(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 deck expansion would not be visible from 41 Street NW at the front of the lot. It would be visible from Belt Road NW to the rear, but should not substantially visually intrude upon the character, scale, and pattern of houses along the street. Many other houses in the same row contain rear decks of a similar scale and design, and mature landscaping large trees, and fencing, provide screening.

*(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.*

The applicant has provided photographs and deck plans and details sufficient to represent the relationship of the proposed deck to adjacent buildings and views from public ways.

*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.*

No special treatment is recommended.

*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 requested special exception relief for side yards would not result in new construction that would be inconsistent with the height or building bulk.

## **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 requested side yard relief for the open deck would not result in a building form, height, or use which would be inconsistent with the intent of the zone. As a row dwelling in the R-2 zone, the building type is now non-conforming to current zoning, but this building type is not impacted by the requested relief. While the deck would be partially built in the side yard of the home, this is a continuation of the existing wall of the house, and the deck would replace an existing deck at this location, for which relief was granted in 1982.

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

As noted above, the requested relief should not adversely impact the use of neighboring properties. The property would maintain a larger than required rear yard. The deck would be at the main level of the house, and existing fencing and screening should limit any potential impacts related to privacy or light. Many of the lots within the square contain similar or larger decks



## V. OTHER DISTRICT AGENCIES

DDOT has informed OP they have no objection to the approval of this application. At the writing of this report, no comments from other District Agencies have been submitted to the record.

## VI. ADVISORY NEIGHBORHOOD COMMISSION

At the writing of this report, no comments from ANC 3E have been submitted to the record.

## VII. COMMUNITY COMMENTS

At the writing of this report, no comments from the community have been submitted to the record.

### Location Map:

