Government of the District of Columbia

Advisory Neighborhood Commission 6C

June 9, 2025

Board of Zoning Adjustment
of the District of Columbia
441 4th Street, NW
Suite 210-S
Washington, DC 20001

Re: BZA 21295 (151 Abbey Pl. NE)

Dear Members of the Board,

On May 14, 2025, at a duly noticed and regularly scheduled monthly meeting with a quorum of seven out of seven commissioners and the public present via videoconference, this case came before ANC 6C. The commissioners voted 7-0 to oppose the application.

The applicants in this case request after-the-fact permission to maintain an illegally constructed rear deck. The deck, which effectively occupies the entire rear yard, brings lot occupancy to 90% by the applicants' own admission. The most recent submitted materials[1] – even after numerous rounds of revisions, many of them filed late – still contain false statements about the condition of the property and the extent of the relief requested. Moreover, the application fails the test for a special exception and likewise demonstrates no "exceptional condition" or "practical difficulty" justifying variance relief. The Board should deny the application.

FACTS

The lot in question is a perfectly rectangular lot with an area of 1038sf. When owners Harry Boss and H. Glenn Phelps created Abbey Place through subdivision in 1924, they created 36 lots with identical dimensions (16' x 64.855') on the east side of the new street and another 29 houses on the west side of the street with these same dimensions. *See* Attachment A (Surveyor subdivision plats). All these lots retain these same dimensions today.

[1] The Board has not yet granted applicants' motions (Exhibits 29 & 41) to accept numerous untimely filings (Exhibits 30A-30D & 41A-41E), nor have the applicants sought leave to untimely file several other documents (Exhibits 34-39). Owing to uncertainty over whether these materials are properly in the record, ANC 6C refers to them in this opposition. We do so in an abundance of caution and without prejudice to our position that the Board should deny leave to file many of these documents. *See* Exhibit 42 (opposition to motion for leave to make untimely filing).

According to the survey filed recently by applicants, the lot occupancy percentage of their property, minus the illegally built deck, is 71%.[2] Applicants' latest burden-of-proof statement wrongly gives a current figure of only 63%. *See* Exhibit 30A p. 1. The most recent Zoning Administrator (ZA) memorandum, relying on an unidentified set of drawings, gives this same incorrect number. *See* Exhibit 34 p. 2 (Notes and Computations). OP's report further repeats the error. *See* Exhibit 40 p. 2.

With a rear yard of only 12' 8", the property has no legal onsite parking spaces. The applicant, ZA, and OP all wrongly assert that one "required off-street parking space" exists. Exhibit 30A p. 1; *see also* Exhibit 34 p. 2 (Notes and Computations) & Exhibit 40 p. 2. At this location, with a 15'-wide rear alley, the minimum depth for a parking space is 18'. *See* Exhibit 41E (plat showing 15' alley); 11 DCMR § C-712.3(f) (imposing § C-712.5 minimum depth for any parking space, "whether required or not required," off an alley 15' or less wide); § C-712.5 (establishing minimum depth of 18').

The previous owner knowingly constructed the deck illegally. Initial permit drawings submitted for renovation of the property explicitly sought permission to construct an elevated rear deck. *See* Attachment B. It is unclear whether the owner voluntarily withdrew the proposal or was told by DOB to eliminate the deck from the plans; either way, the deck is absent from the corresponding sheet in the final plans bearing DOB's approval stamp. *See* Attachment C.

The representative for the applicants, who appears to have significant ties to the previous owner and was heavily involved in the renovation project,[3] concedes that construction of the illegal deck brings lot occupancy to 90%. *See* Exhibit 30A p. 1. The ZA and OP concur. *See* Exhibit 34 p. 2 (Notes and Computations) & Exhibit 40 p. 1.

ANALYSIS

The applicants seek both a variance and special exception relief. The application, however, fails to satisfy either test.

1. The Variance Test is not Met because No Exceptional Condition or Practical Difficulty Exists

Factors relevant to the Board's consideration of a variance request include the following:

- the existence of an "exceptional condition";
- whether compliance with the regulations would be "unnecessarily burdensome"; and
- the extent/severity of the variance sought.

Because all these factors weigh against the application, the Board should deny relief.

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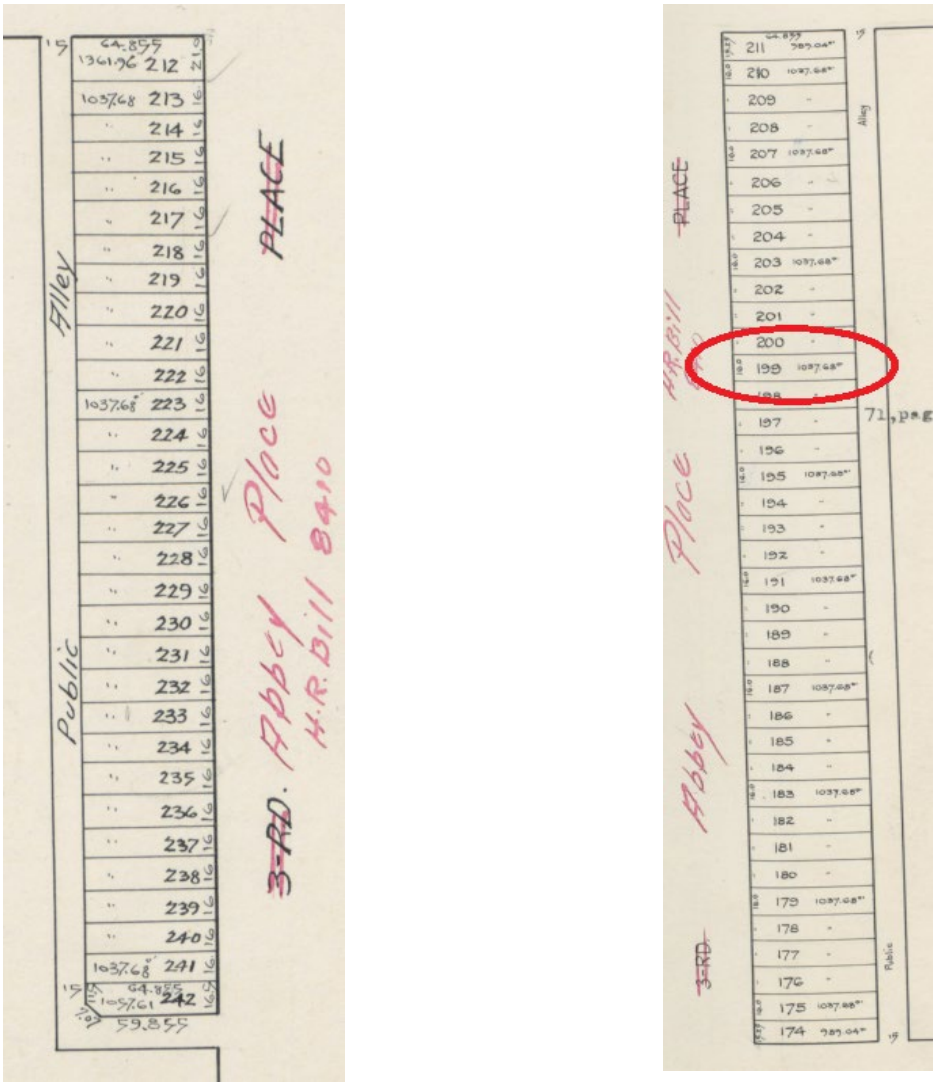
[2] The covered front porch has an area of 64sf (11.2' x 5.7') and the house, including addition, an area of 672sf (42' x 16'), for a total building area of 736sf. On a 1038sf lot, this gives a lot occupancy of 71%.

[3] When asked at the ANC's zoning committee meeting about the nature of his association with the developer, Mr. Martinez gave evasive answers. His name appears on multiple documents in the permit file and stop-work order records, including one where he signed off as the owner of the property. *See* Attachment D (with added highlighting).

There is no "exceptional condition" justifying relief. The Court of Appeals has held that to support a variance request, "the extraordinary or exceptional condition must affect a **single** property." *Metropole Condo. Ass'n v. District of Columbia Bd. of Zoning Adjustment*, 141 A.3d 1079, 1082-83 (D.C. 2016) (emphasis added), *quoting Gilmartin v. District of Columbia Bd. of Zoning Adjustment*, 579 A.2d 1164, 1168 (D.C. 1990).

More specifically, the condition must affect only a single property "rather than exist as part of 'the general conditions in the neighborhood.'" *McDonald v. District of Columbia Bd. of Zoning Adjustment*, 291 A.3d 1109, 1123 (D.C. 2023), *quoting Gilmartin*, 579 A.2d at 1168.

The applicants claim to have an exceptional condition because the property is "exceptionally small." Exh. 30A p. 1. As noted above, this is plainly wrong: there are **64** companion lots on either side of Abbey Place with identical lot area and dimensions.



Detail from Attachment A (with subject property circled in red)

Because "the property must possess a **unique** feature that impedes compliance with the zoning regulations," *McDonald*, 291 A.3d at 1123 (emphasis added), and because such uniqueness is clearly lacking here, there exists no "exceptional condition" warranting variance relief.

The Board recently encountered a similar situation in BZA 20280A (622 Eye St. NE). In voting 3-0-2 to deny an area variance, each of the Board members based their decision on the fact that the purported "exceptional condition" was instead a condition widely present on the same square:

- "all those other homes have the same amount of street frontage, and I don't think that there's anything unique for the area variance in this" (Chairman Hill)

- "the evidence in the record indicates there are similar configurations as you pointed out, along the square and along the alley that this property is not unique" (Mr. Blake)

- "I don't think there's [any] exceptional condition to justify this, which has been stated. So I will be voting to deny as well." (ZC Chairman Hood)

Tr. Dec. 18, 2024 pp. 43, 45 & 47.

Likewise, in BZA 17188 the owner sought variance relief to construct an accessory garage on a 1,323sf lot, which would have increased the lot occupancy from 65% to 89%. The Board unanimously denied that application, finding that

> the Applicant failed to show any exceptional situation or condition of the subject property to support the granting of variance relief. The property is a regularly-shaped, level, rectangular parcel. […] It is true that the Applicant's lot is nonconforming as to lot area and width and her structure as to lot occupancy, but there are other such nonconforming structures and lots in the neighborhood. Ownership of a nonconforming structure on a nonconforming lot cannot constitute the necessary uniqueness for variance purposes. Such nonconformities, rather than being unique to any particular structure or lot, are features common to many properties within the District.

BZA Order 17188 p. 5. The Board also noted that granting such an unwarranted variance to one applicant "could result in similar demands from other property owners in the Square, approval of which would 'in effect be amending the Zoning Regulations,' something which the Board is powerless to do." *Id.*

This same logic applies to the present case. Indeed, because the relief sought here is even greater—asking to build to 90% lot occupancy—the logic of the Board's earlier decision applies with even greater force.

The applicant has failed to show compliance is "unnecessarily burdensome." Not every inconvenience amounts to an "unnecessary burden" imposing "practical difficulties." The Board cannot grant a variance just because the regulations make it difficult for the owner to build a

particular structure if the owner can use or improve the land in other ways compatible with the regulations.

An applicant bears the burden of presenting substantial evidence that they face an "unnecessary burden"—and the applicants here have made no such showing. They allege they must maintain a "required off-street parking space," Exhibit 30A p. 1, but as discussed above the space in question does not and cannot meet the minimum dimensions for such parking.

The applicants' other arguments are equally unpersuasive. They claim that having outdoor access from the main level "requires relief from zoning constraints," *id.*, which is false. A staircase from the main floor of a dwelling down to the grade below is expressly excluded from the definition of "building area." *See* 11 DCMR § B-100.2 ("Building area shall not include … uncovered stairs, landings, and wheelchair ramps that serve the main floor"). As a result, replacing the illegal deck with such stairs would not increase the lot occupancy and a permit can therefore issue as a matter of right. Nor would such a staircase "consume the entire rear yard," as illustrated by the compact area occupied by the spiral staircase attached to the illegal deck.

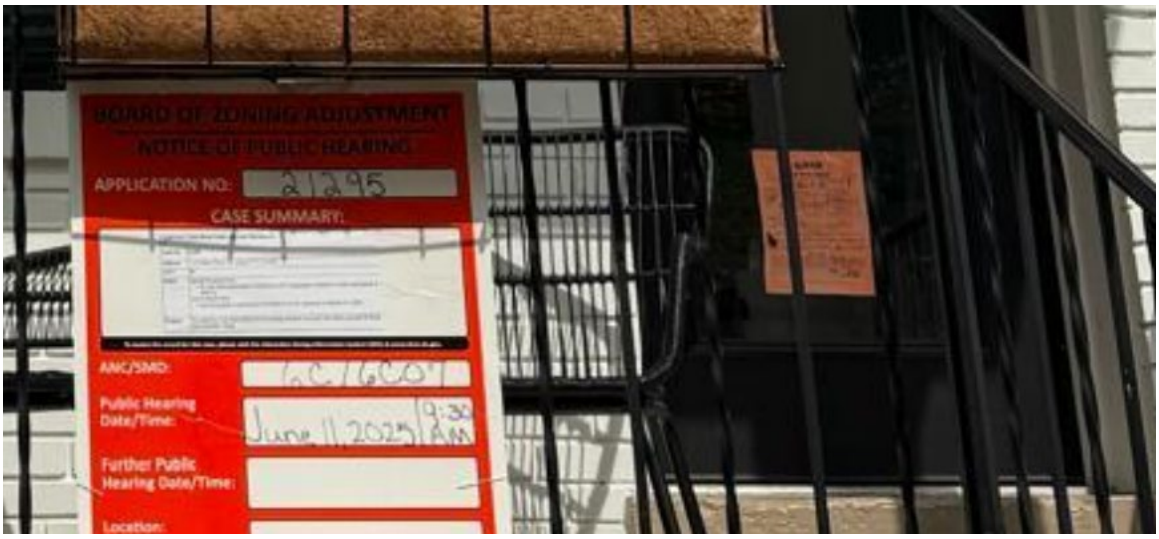
OP's report admits that this property shares numerous characteristics with other ones on Abbey Place, only to repeat *verbatim* the applicants' wrongheaded claims of exceptional condition and practical difficulty. OP's additional argument – that "removing the deck would be costly and a practical difficulty" (Exh. 40 p. 3) – overlooks the crucial fact that **the applicants were fully on notice of the deck's illegality prior to purchasing the property.**

Specifically, the applicants bought the property on August 29, 2024. By then, however, DOB had issued and posted two separate stop-work orders (SWOs) on the front door on August 9 and 14:

1151 ABBEY PL NE	0773 0199	Address	Applied	2024/08/14	STOP WORK ORDER - ILLEGAL CONSTRUCTION/WORKING WITHOUT A PERMIT - PLEASE CONTACT DOB FOR MORE INFORMATION
1151 ABBEY PL NE	0773 0199	Address	Applied	2024/08/09	STOP WORK ORDER - ILLEGAL CONSTRUCTION/WORKING WITHOUT A PERMIT - PLEASE CONTACT DOB FOR MORE INFORMATION

Screenshot from DOB's SCOUT Permit Database

In fact, the second SWO is clearly visible in one of the photos submitted by the applicants:



Detail from Exhibit 27 (p. 1)

Having chosen to go through with the purchase despite very clear and obvious notice of the deck's illegality, the applicants are estopped from claiming that removing the illegal structure would constitute a hardship.

In short, the applicants have offered no evidence that they would be "unnecessarily burdened" by compliance with the regulations. As a result, no "practical difficulties" are demonstrated on this record and the application should be denied.

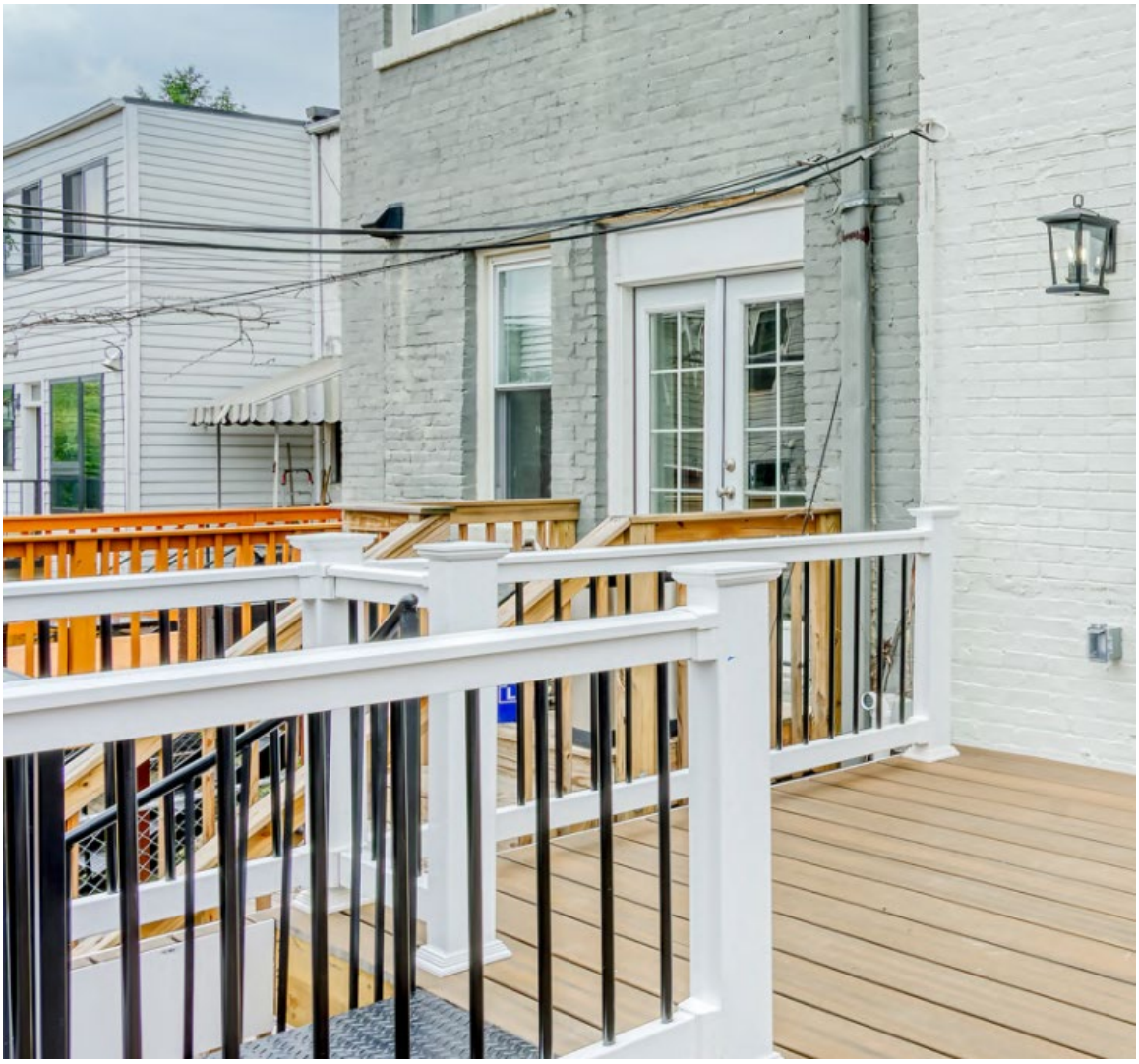
The extent/severity of the requested variance is excessive. This property is already heavily overbuilt at 71% lot occupancy, above even the maximum for special-exception relief. The extent of relief sought – increasing lot occupancy to 90% – is both substantial and unjustified. Just as in BZA 17188, the Board should deny such extreme relief. *See also* BZA Order 20725 p. 5 (denying request to occupy the entire rear yard with an elevated deck increasing lot occupancy from 73% to 95.6% because relief "require[s] a significant degree of variance relief given that … a maximum of 60 percent lot occupancy is permitted as a matter of right and up to 70 percent may be permitted by special exception").

2. The Application Fails the Test for Special-Exception Relief

The applicants request permission to shrink the already nonconforming rear yard from less than 13 feet to zero. Because granting the relief sought would unduly compromise the privacy of neighboring properties, the Board should deny the application.

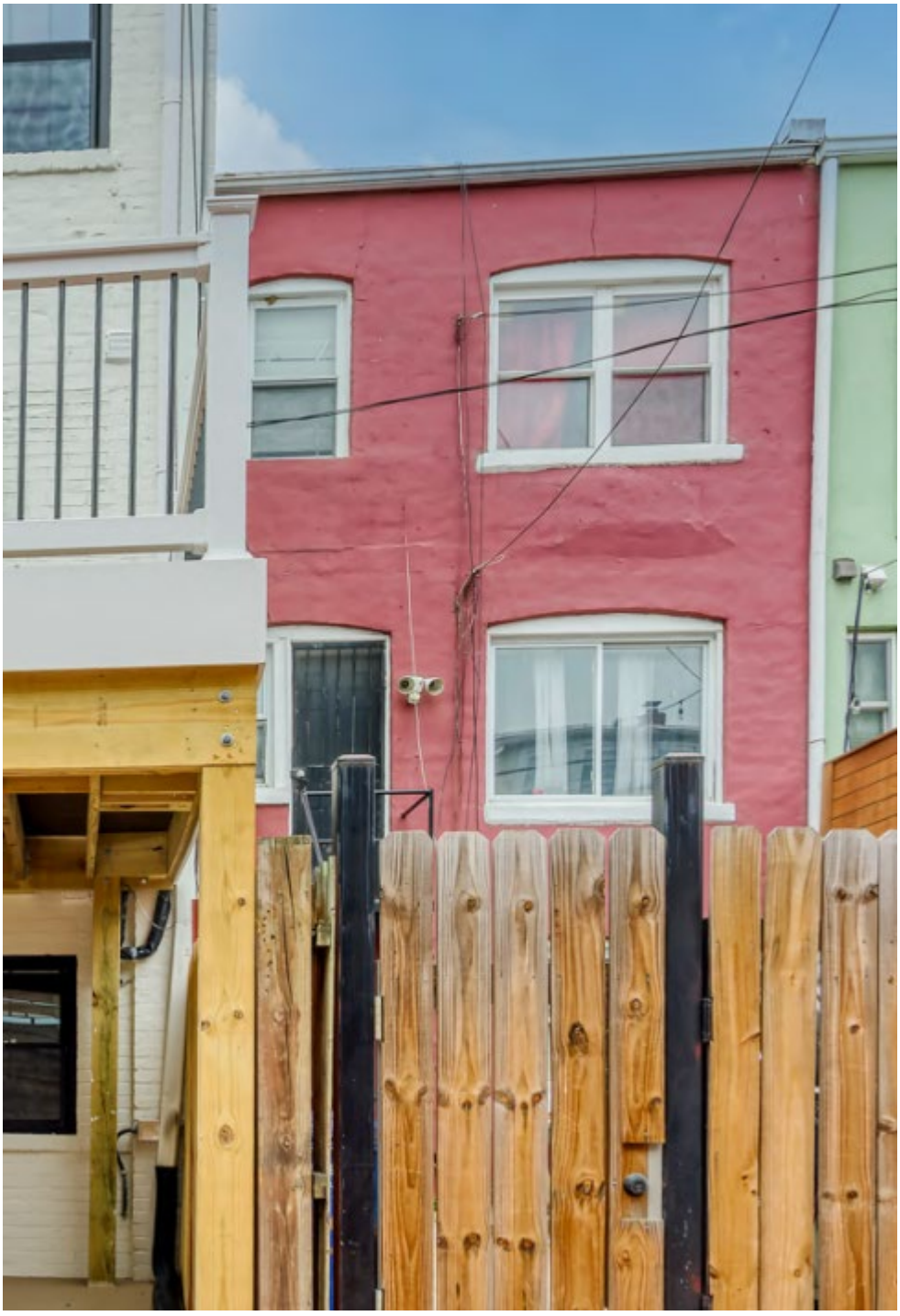
As part of the test for this special exception, section E-5201.4(b) mandates that "[t]he privacy of use and enjoyment of neighboring properties … not be unduly affected." The applicants claim (Exh. 30A p. 1) that construction of the deck has no privacy impacts, but their own photos demonstrate the opposite.

The illegal deck provides point-blank views into the rear interior of the abutting property at 1149:



Detail from Exhibit 10 (p. 5)

Similarly, the deck directly overlooks the rear yard of 1153, offering views from an elevated position into the windows on the rear of 1153 (from as close as 12') and the entire rear yard:



Detail from Exhibit 10 (p. 1)

As this degree of invasiveness is forbidden by the regulation, for this reason alone the applicants fail to satisfy the special exception test.

* * *

Because the application meets none of the criteria for variance or special-exception relief, the Board should deny the application.

Sincerely,

Mark Eckenwiler
Vice-Chair, ANC 6C
(as authorized representative)

cc: Chris Martinez