

ANC 6C Opposition

BZA 21295

Mark Eckenwiler, ANC 6C04

June 11, 2025

Relief Sought

- Applicants seek after-the-fact permission to retain an illegally constructed rear deck occupying the entire rear yard
- The illegal deck requires two areas of relief
 - A variance allowing an increase in lot occupancy to 90%
 - A special exception allowing a reduction of the required rear yard to zero feet

Relevant Factors

- Factors relevant to the Board's analysis:
 - the presence or absence of an “exceptional condition”
 - whether compliance with the regulations imposes “practical difficulties” that are “unnecessarily burdensome”
 - the extent/severity of the relief sought
- **The application fails because all these factors weigh against approval**

No “Exceptional Condition” Exists

- The “exceptional condition” must affect a **single** property
 - *Metropole Condo. Ass'n v. BZA* (DC Ct. App. 2016)
- The condition must affect only a single property “rather than exist as part of the general conditions in the neighborhood”
 - *McDonald v. BZA* (DC Ct. App. 2023)
- This property sits on a 1038sf rectangular lot created in the same subdivision as 64 companion lots on Abbey Place with identical dimensions

General Conditions in the Neighborhood

There are literally
dozens of
identically sized
lots on both sides
of Abbey Place

| Abby | Place |
|------|--------|
| 211 | 103748 |
| 210 | 103748 |
| 209 | - |
| 208 | - |
| 207 | 103748 |
| 206 | - |
| 205 | - |
| 204 | - |
| 203 | 103748 |
| 202 | - |
| 201 | - |
| 200 | - |
| 199 | 103748 |
| 198 | - |
| 197 | - |
| 196 | - |
| 195 | 103748 |
| 194 | - |
| 193 | - |
| 192 | - |
| 191 | 103748 |
| 190 | - |
| 189 | - |
| 188 | - |
| 187 | 103748 |
| 186 | - |
| 185 | - |
| 184 | - |
| 183 | 103748 |
| 182 | - |
| 181 | - |
| 180 | - |
| 179 | 103748 |
| 178 | - |
| 177 | - |
| 176 | - |
| 175 | 103748 |
| 174 | 103748 |
| | 59.855 |

| Abby | Place |
|------|--------|
| 211 | 103748 |
| 210 | 103748 |
| 209 | - |
| 208 | - |
| 207 | 103748 |
| 206 | - |
| 205 | - |
| 204 | - |
| 203 | 103748 |
| 202 | - |
| 201 | - |
| 200 | - |
| 199 | 103748 |
| 198 | - |
| 197 | - |
| 196 | - |
| 195 | 103748 |
| 194 | - |
| 193 | - |
| 192 | - |
| 191 | 103748 |
| 190 | - |
| 189 | - |
| 188 | - |
| 187 | 103748 |
| 186 | - |
| 185 | - |
| 184 | - |
| 183 | 103748 |
| 182 | - |
| 181 | - |
| 180 | - |
| 179 | 103748 |
| 178 | - |
| 177 | - |
| 176 | - |
| 175 | 103748 |
| 174 | 103748 |

Recent Board Decisions Finding No Exceptional Condition

- BZA 20280A
 - All three voting Board members opposed area variance on grounds that numerous properties on the same block shared the allegedly “exceptional” condition
- BZA 17188
 - Board unanimously denied variance seeking increase in lot occupancy from 65% to 89%
 - Cited regular rectangular shape, existence of numerous other nearby lots of similar dimensions

The Applicants Have Shown No “Practical Difficulties”

- The applicants bear the burden of presenting substantial evidence that compliance with the regulations would be “unnecessarily burdensome”
- Not every inconvenience amounts to “practical difficulties”
- The applicants’ claimed difficulties do not exist

“Have to Maintain Required Parking” - FALSE

- According their own survey, the rear yard is only 12.8' deep
- The minimum depth for a parking space at this location is 18'
 - Alley is only 15' wide
 - §§ C-712.3(f) and C-712.5
- Thus, there exists no required space that must be preserved
- Applicants are free to remove all the paving in the rear and create a pleasant outdoor space at grade

“No Way to Access Lower Level Without Deck” - FALSE

- With the illegal deck removed, applicants could construct a staircase from the main floor to grade *as a matter of right*
- Why? Such stairs are expressly excluded from the definition of “building area”
 - 11 DCMR § B-100.2 (“Building area shall not include ... uncovered stairs, landings, and wheelchair ramps that serve the main floor”)
 - Result: such stairs do not count toward lot occupancy
- Stairs would not occupy all or even much of rear yard

OP's Claim: “Cost of Removing the Deck is a Practical Difficulty” - FALSE

- Applicants had explicit notice of the deck’s illegality before sale closed & are estopped
 - Stop-work orders posted on front door Aug. 9 & 14, 2024
 - Purchase finalized more than two weeks later, Aug. 29



The Extent/Severity of the Relief Sought is Excessive

- Applicants admit the illegal deck brings lot occupancy up to 90%
- The high degree of relief needed weighs against granting the application
- Compare to BZA Order 20725
 - Elevated rear deck increasing lot occupancy from 73% to 95.6% “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”

All Factors Weigh against Relief and the Board Should Deny the Variance

- There is no unique “exceptional condition”
- The applicants have failed to carry their burden of proof
 - No legitimate “practical difficulties” shown
- The relief sought is excessive in its scope

The Parallel Special Exception Request is Fatally Deficient

- Section E-5201.4(b) mandates that “[t]he privacy of use and enjoyment of neighboring properties ... not be unduly affected”
- Applicants assert the illegal deck has no privacy impacts
- Their own photos tell a different story

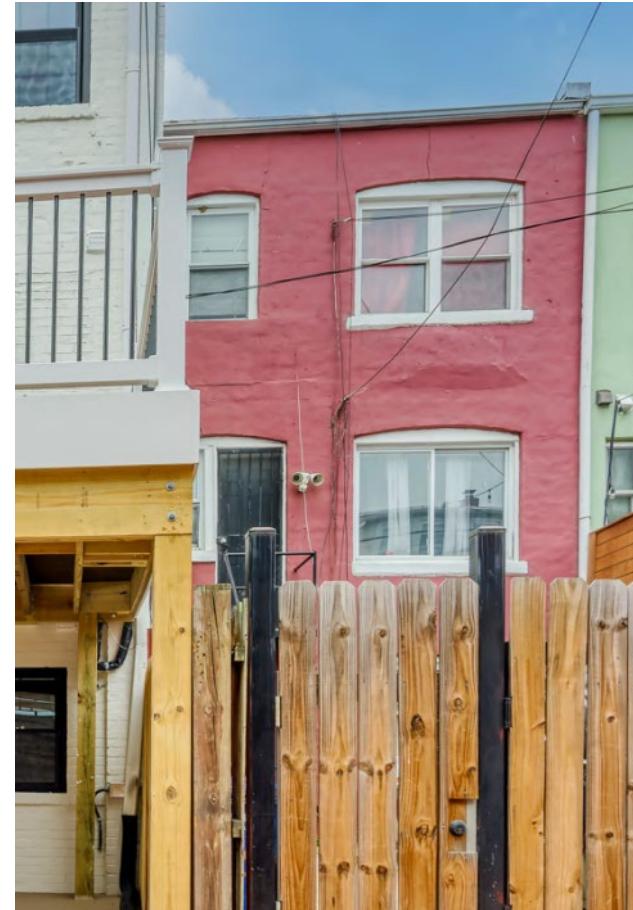
1149 Abbey Place

- Direct views into rear interior from point-blank range



1153 Abbey Place

- Close-range views looking down onto and into entire rear yard
- Views into home's rear windows from as close as 12' away



Neither Test is Satisfied and the Board Should Deny the Application

- Variance test not met
 - There is no unique “exceptional condition”
 - The applicants have failed to carry their burden of proof
 - No legitimate “practical difficulties” shown
 - The relief sought is excessive in its scope
- Special exception prerequisite not satisfied
 - Undue adverse impact on privacy of both abutting dwellings