

BEFORE THE DISTRICT OF COLUMBIA BOARD OF ZONING ADJUSTMENT

APPLICATION OF
DAVID ORTIZ AND
NICOLE JOHNSTON

149 THOMAS ST NW
SQUARE 3114 LOT 0065
ANC 5E

STATEMENT OF THE APPLICANT

I. NATURE OF RELIEF SOUGHT

We, the owners and inhabitants, submit this application for retroactive special exception relief pursuant to 11 DCMR X-901.2 and E-5201.1 for rear yard (E-207.1) for an existing rear deck.

II. JURISDICTION OF THE BOARD

The Board of Zoning Adjustment (the “Board” or “BZA”) has jurisdiction to grant special exception relief requested pursuant to D.C. Code 6-641.07(g)(2) and variance relief requested pursuant to D.C. Code § 6-641.07(g)(3).

III. BACKGROUND

Applicants are owners of 149 Thomas St NW (“the Property”). Applicants purchased the property on May 17, 2024 (see Deed in submitted documents) from Regal Road Estates, LLC. The property is in ANC5E and the zoning is RF-1. The rear deck was an existing structure that was part of the purchase of the property.

Owners submitted an application to the Department of Buildings (application number B2407441) seeking approval to construct a rolling alley door. On submission of the application, the Department of Buildings notified the owners that the existing rear deck was not permitted; further, the dimensions of the deck violated 11 DCMR E-207.1

requiring a minimum rear yard depth of 20 feet. Owners did not construct the deck. Based on the observation that the wood is unweathered and that the prior owner is a developer, we conclude that the deck is relatively new and that the prior owner constructed the deck.

The specification of the rear yard is as follows. The total depth of the rear yard is 24 feet. However, extending from the home for seven feet is a sunken well ranging from 16 inches to 28 inches below grade, rendering the depth of the at-grade section of the rear yard 17 feet. The rear deck including handrails extends from the home for 8 feet at a height of four feet 10 inches above grade. The depth of the rear yard with deck included is 16 feet. Owners use the rear yard for parking and storage.

IV. NATURE OF SPECIAL EXCEPTION RELIEF AND STANDARD OF REVIEW

Applicants request retroactive special exception relief from 11 DCMR E-207.1 for required depth of the rear yard for zone RF-1 for an existing deck pursuant to 11 DCMR E-5201.1(b). 11 DCMR E-5201.4 specifies that to receive a special exception, the addition (in this case a rear deck) 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;
- (b) The privacy of use and enjoyment of neighboring properties shall not be unduly compromised;
- (c) The proposed addition or accessory structure, together with the original building, or the proposed new 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 and alley frontage...

Under D.C. Code § 6-641.07(g)(2) and 11 DCMR X-901.2, the Board is authorized to grant a special exception if it finds that the special exception:

- (a) Will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps;
- (b) Will not tend to affect adversely, the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps; and
- (c) Will meet such special conditions as may be specified in this title.

V. THE APPLICATION MEETS THE BURDEN OF PROOF

A. FACTORS UNDER 11 DCMR E-5201.4

1. The light and air available to neighboring properties shall not be unduly affected

The rear deck does not unduly affect the light and air available to neighboring properties.

The deck is on the north side of the property, which has less ambient light than the south side. While the rails of the deck rise approximately three feet above the fence line, they are light permeable and only cast a shadow early in the morning when the sun is in the east and late in the evening when the sun is in the west. Thus the impact on available light is minimal. The impact on air is negligible because the deck is an air permeable structure. The photograph below, shows that the light on the property and adjacent properties is unaffected by the rear deck.



Figure 1: Demonstration of minimal effect on air and light.

2. *The privacy of use and enjoyment of neighboring properties shall not be unduly compromised;*

The rear deck does not unduly compromise the privacy and use and enjoyment of neighboring properties. The rear deck is level with the rear door of the house. The neighboring properties have rear doors at similar level. Therefore, and as illustrated in the photographs below, there is no additional impact on privacy then would otherwise be the case. Regarding enjoyment of neighboring properties, the rear yards are used primarily for parking. Therefore, the rear deck imposes no constraint on neighboring properties.



Figure 2: Left, center, and right views from the rear deck of the neighboring properties.

3. *The proposed addition . . . 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 and alley frontage. . . .*

The rear deck does not substantially visually intrude upon the character, scale, and pattern of houses along the street and alley frontage. Most of the homes have opaque fences, which largely conceal the deck from view. Additionally, most of the homes have a deck of similar size. Thus the rear deck, as constructed, is consistent with the character, scale, and pattern of neighboring properties. See photographs below.



Figure 3. Views from east (left) and west (right) from the alley of 149 Thomas St NW

B. FACTORS UNDER 11 DCMR X-901.2

- 1. Will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps;*

The property resides in a residential flat zone 1 (RF-1). Per 11 DCMR E-101.2(a), the RF zones are intended to “[r]ecognize and reinforce the importance of neighborhood character, walkable neighborhoods, housing affordability, aging in place, preservation of housing stock, improvements to the overall environment, and low- and moderate-density housing to the overall housing mix and health of the city.” The existing rear deck does not have an impact on the walkability or character of the neighborhood. Pedestrians sparingly use the alley. As described in section V.A.3 above, the existing rear deck is

consistent with the additions to neighboring properties and the visual character of the alley. The rear deck has no impact on the character of Thomas St.

2. Will not tend to affect adversely, the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps; and

The existing rear deck will not affect adversely the use of neighboring property. As discussed in section V.A.2 above, neighboring properties use the rear yards primarily for the purpose of parking. This is because the rear yards are relatively shallow and because parking is limited in this section of the Bloomingdale neighborhood.

3. Will meet such special conditions as may be specified in this title.

See discussion in section in V.A above.

VI. STATEMENT OF COMMUNITY OUTREACH

Per Section Y section 300.11, applicants have provided this application and supporting materials to the Office of Planning and ANC 5E. We have also provided this application to Crispus Attucks Park and the Bloomingdale Civic Association. We affirm that we have discussed our application with our two adjacent property owners.

VII. CONCLUSION

For the reasons stated above, the existing rear deck meets the standards for special exception relief under the Zoning Regulations. Accordingly, we respectfully request that the BZA grant the application.