

September 17, 2026

Office of Zoning
441 4th Street, NW
Ste. 200S
Washington, DC 20001

Re: 2458 39th Place, NW DC 20007

Burden of Proof Statement

Description of Project

The applicant is proposing to construct a 12' x 16' open deck with steps to grade, which will be constructed at 8' above grade. This proposed open deck will result in a 14'-6''' rear yard setback in lieu of the required 20'. Please note, there was an existing deck and steps on the rear of the house that will be removed and can be seen in the supplied photos.

Description of Required Zoning Relief

Number	Type of Relief	Zoning Sections	Reason [or Basis]
1	Special Exception	D – 210.1 D – 5201.1, (a) X – 901.2	Proposed rear 1-story deck addition exceeding the maximum lot occupancy.
2	Special Exception	D-207.1 D-5201, (b) X-901.2	Proposed rear 1-story deck addition not meeting required rear yard setback.

Special Exception

Relief #1 – Special Exception (maximum lot occupancy)

The first relief requested according to the referral memorandum is to section **D-210.1** which requires that lots in the R-3 (including R-3/GT) zoning have a maximum lot occupancy of 40%. The property contains an existing middle of the group townhome with a front porch and an existing deck with steps on the rear. The existing deck is currently 12'x16' which is the same size as the proposed deck which will be constructed in its place. The existing deck actually has a 4'x4' landing in the middle of the existing steps and the proposed deck will not. Therefore, the proposed lot occupancy is actually slightly less

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than what it is today. Regardless, the existing house and front porch, along with the replaced deck, results in a total lot occupancy of 65.67% (just *under* what it is now).

The lot is small and the structures all exist today. There is no change proposed to the front porch or the existing dwelling. Moreover, the existing deck is the same size as the proposed deck. Thus the lot occupancy overage exists as is today. Approving the Special Exception actually will reduce the occupancy by 16 square feet because there is no landing proposed in the new steps.

Addressing §5201 for this Special Exception

The Referral Memorandum goes on to then list zoning section D-5201 which states the following:

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	

Continuing in this section, 5201.4 states the following:

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:

Granting this open deck over a residential rear yard will not affect the light and air available to neighboring properties (§5201.4(a)). The neighbor across the alley directly to the rear is over 60 feet away from the existing dwelling, and thus would be over 45 feet away from the closest point of the proposed deck. Furthermore, the area under the deck will remain open (unenclosed), and the deck is constructed on 6x6 pier supports. The privacy of use and enjoyment of neighboring properties will not be unduly compromised (§5201.4(b)). The houses across the alley are the same as the subject dwelling

and several have stoops and decks on their rear, many of which the same size and height of this one. And again, there is the same size open deck in the same location on this property today.

The proposed structure, together with the original building, as viewed from the alley, will not substantially visually intrude upon the character, scale, and pattern of houses along the subject street frontage (**§5201.4(c)**). As stated, there are several homes along the alley that have nearly identical wooden open decks as the one proposed here. Allowing this deck will actually work to bring this home more in harmony with neighbors. This can be easily seen by aerial photos. To verify all of the above, please review the plans submitted which confirm the aforementioned statements (**§5201.4(d)**)

Addressing §901.2 for this Special Exception

Decks on the rear of residential dwellings may be the most commonly added improvements. The unique circumstances found on this property would deny the owner the ability to enjoy the same amenity that nearly every other property owner could enjoy. Approving this Special Exception would actually therefore render the property to be *more* in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps (**§901.2(a)**). But certainly in no way would it be in opposition to them. Denying the request would relegate the same deck that is proposed but that is badly aging to simply remain.

As stated earlier, the deck is elevated and over an existing residential rear yard area. This proposed deck would not adversely affect the use of neighboring property in accordance with the Zoning Regulation and Zoning Maps in any way (**§901.2(b)**). It actually would have no affect on neighboring property at all, let alone negative affects. While no further special conditions are anticipated with the approval of this Special Exception, the applicant fully intends to meet any such conditions should they be required (**§901.2(c)**).

Relief #2 – Special Exception (minimum rear yard)

The first relief requested according to the referral memorandum is to section **D-207.1** which requires a rear yard of 20 feet in the R-3 zone (to include R-3/GT). The proposed open deck would extend to approximately 14 feet 6 inches (14'-6") from the property line which is 5.5' feet short of that which is required. Note that this 14'-6" is to the deck, and the flight of stairs projects an additional 10'-8" toward the alley (3'-10" from rear property line).

The rear yard is very small already. In fact, the existing dwelling is positioned 26 feet 6 inches (26'-6") from the rear property line. Thus, only a 6.5-foot projection could be constructed without the need for a Special Exception. Obviously, 6.5 feet is too small to be practical.

The proposed deck is only 12' in projection which is extremely modest in nature. The applicant here simply wishes to utilize their rear amenity space as nearly every other property is able to enjoy. At only 12 feet in projection, the proposed deck was designed to the very minimum practical size in projection in order to minimize the relief requested to the maximum extent possible. And again, this proposed deck is replacing the deck that exists there today.

Addressing §5201 for this Special Exception

The Referral Memorandum goes on to then list zoning section D-5201.1 which states the following:

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:

(b) Yards, including alley centerline setback

Continuing in this section, 5201.4 states the following:

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:

Granting this open deck over a residential rear yard will not affect the light and air available to neighboring properties (**§5201.4(a)**). The neighbor across the alley directly to the rear is over 60 feet away from the existing dwelling, and thus would be over 45 feet away from the closest point of the proposed deck. Furthermore, the area under the deck will remain open (unenclosed), and the deck is constructed on 6x6 pier supports. The privacy of use and enjoyment of neighboring properties will not be unduly compromised (**§5201.4(b)**). The houses across the alley are the same as the subject dwelling and several have stoops and decks on their rear, many of which the same size and height of this one. And again, there is the same size open deck in the same location on this property today.

The proposed structure, together with the original building, as viewed from the alley, will not substantially visually intrude upon the character, scale, and pattern of houses along the subject street frontage (**§5201.4(c)**). As stated, there are several homes along the alley that have nearly identical wooden open decks as the one proposed here. Allowing this deck will actually work to bring this home more in harmony with neighbors. This can be easily seen by aerial photos. To verify all of the above, please review the plans submitted which confirm the aforementioned statements (**§5201.4(d)**)

Addressing §901.2 for this Special Exception

Decks on the rear of residential dwellings may be the most commonly added improvements. The unique circumstances found on this property would deny the owner the ability to enjoy the same amenity that nearly every other property owner could enjoy. Approving this Special Exception would actually therefore render the property to be *more* in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps (**§901.2(a)**). But certainly in no way would it be in opposition to them. Denying the request would relegate the same deck that is proposed but that is badly aging to simply remain.

As stated earlier, the deck is elevated and over an existing residential rear yard area. This proposed deck would not adversely affect the use of neighboring property in accordance with the Zoning Regulation and Zoning Maps in any way (**§901.2(b)**). It actually would have no affect on neighboring property at all, let alone negative affects. While no further special conditions are anticipated with the

approval of this Special Exception, the applicant fully intends to meet any such conditions should they be required (**\$901.2(c)**).

As an additional note to address zoning regulations and standards, please be advised that this proposal in no way is a detriment to the public good. As this is a modest open deck on a residential property, the public good is in fact not affected at all. The lot is private and not open to the public, and the extent of the project does not extend outside of the privately held property.

Furthermore, the project in no way impairs the intent, purpose, or integrity of the zoning regulations. While the proposal cannot meet the zoning regulations in their model form (hence the need for BZA approval), the structure itself, an open deck, is one of the most pervasive improvements made upon residential structures. Its commonness is actually one of the practical difficulties and undue hardships the applicant is facing; that denial of the adjustment precludes them from enjoying an improvement that so many others enjoy. The minor request does not unravel the intent of the zoning code or deface its integrity; it simply acknowledges that unique circumstances sometimes exist that necessitate the adjustment of rigid compliance for the common sense good.