

July 22, 2018

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VIA IZIS

Mr. Frederick Hill,
Chairperson Board of
Zoning Adjustment
441 4th Street NW Suite 210S
Washington, DC 20001

**Re: BZA Application for 4821 43rd Street, NW
Square 1672, Lot 0009 – Application for Special Exception Relief
DCRA BZA Case#: FY-18-39-Z**

Dear Chairperson Hill and Members of the Board:

We, Adam Rubinson and Susan Weinstein, owners of 4821 43rd Street, NW, ask that you please accept our filing for the enclosed application. We request a special exception pursuant to D-306.4 to construct a one-story rear addition (with a deck on top, and stairs from the deck to ground level) that extends further than ten (10) feet beyond the farthest rear wall of an adjoining principal residential building pursuant to D-306.3 (X, 901.2).

We believe the enclosed demonstrates that the application meets each element of the relevant review standards for special exceptions specified in Subtitle X § 901. Specifically, we believe we demonstrate: lack of substantially adverse impact to abutting neighbors; non-opposition to the project from abutting neighbors; lack of any view to the proposed project from a public street or alley (and, that it is also in keeping with the character of the neighborhood, as demonstrated by the precedent of a similar neighborhood project, previously approved by the District in the last few years). We would also like to stress that our inability to do this addition to our home – which we have been planning for many years -- will have a major impact on our family's quality of life.

The application package includes the following materials:

1. BZA Form 120, Application for Special Exception
2. BZA Form 126, Fee Calculator
3. Referral Memo from DCRA to BZA

4. Agent Authorization Letter
5. Pledge of Intent to Contact ANC, OP, and Neighbors
6. Statement of Initial Community Outreach (Efforts Made To-date to Contact ANC, OP, and Neighbors, showing evidence of support)
7. Signed Building Plat
8. Building Plat with DC Atlas
9. Site Plan (with stairs)
10. Backup Site Plan (without stairs)
11. Architectural Plans and Details (with stairs)
12. Backup Architectural Plans and Details (without stairs)
13. Applicant's Statement of **Burden of Proof – Special Exception** (document below), which also contains a statement of intended use
14. Color Images (Photographs) of the Property
15. List of names and mailing addresses of owners of all property within 200 feet of the boundaries of the Property, as supplied by DC OTR
16. Map of 200-foot radius of Property, as supplied by DC OTR
17. DCOZ Zoning Map, depicting the Property and its surroundings
18. Summary of Planned Witness Testimony

Based on our interpretation of the instructions on the BZA website, and in consultation with BZA staff, we believe that the application is complete and acceptable for filing, and request that the Board schedule a public hearing for the application as soon as possible. If you have any questions please do not hesitate to contact us at 202-491-7005 or adam.rubinson@gmail.com.

Thank you for your attention to this application.

Sincerely,

Adam Rubinson and Susan Weinstein
(Homeowners of 4821 43rd Street NW)

**BEFORE THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT**

**APPLICATION OF
Adam Rubinson and Susan Weinstein**

**4821 43rd Street, NW
ANC 3E**

STATEMENT OF THE APPLICANT
(BURDEN OF PROOF – SPECIAL EXCEPTION)

I. NATURE OF RELIEF SOUGHT

This statement is submitted by Adam Rubinson and Susan Weinstein (collectively, the “applicant”), the owners and inhabitants of the property located at 4821 43rd Street NW, Square 1672, Lot 0009, (the “Property”) in support of our application for special exception relief pursuant to 11 DCMR § D-306.4 to construct a one-story rear addition, with a deck on top and stairs from the deck to ground level (the “project”) that extends further than ten (10) feet beyond the farthest rear wall of an adjoining principal residential building pursuant to D-306.3 (X, 901.2).

II. JURISDICTION OF THE BOARD

According to DCMR 11 Subtitle X, 901, the Board of Zoning Adjustment (the “Board” or “BZA”) has jurisdiction to grant the special exception relief requested pursuant to D.C. Code § 6-641.07(g)(2), where, in the judgment of the BZA, the special exception will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps; and will not tend to affect adversely, the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps.

According to DCMR 11 Subtitle D, 5201.1, the BZA may approve as a special exception in the R zones relief from development standards of this subtitle, subject to the provisions of this section and the general special exception criteria at Subtitle X, Chapter 9 for the limitations on

enlargements or additions to nonconforming structures as set forth in Subtitle C § 202.2.

Under D-5201.2, special exception relief under this section is applicable only to an addition to a building with only one (1) principal dwelling unit; or a new or enlarged accessory structure that is accessory to such a building.

III. APPLICANT'S BURDEN OF PROOF

According to D-5201.3 (Addition to a Building or Accessory Structure), an applicant for special exception under this section shall demonstrate that the proposed addition or accessory structure *shall not have a substantially adverse effect on the use or enjoyment of any abutting or adjacent dwelling or property; in particular:*

- 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 addition or accessory structure, together with the original 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 subject street frontage.*

As Applicant is not represented by counsel, the BZA may provide any other relevant regulations that reflect the burden of proof for the relief sought.

Applicant plans to demonstrate that it will meet this burden.

IV. BACKGROUND

A. The Property and Its Surroundings

The Property contains a three-story (three-bedroom) rowhouse, in a block of six three-story rowhouses built by the same developer around 1982. The Property's structure sits as one of the middle rowhouses (the third one in from the northern entrance to the block). The rowhouses

are virtually identical in dimension, with the exception of the southern-most rowhouse, which is larger, and is planned for demolition this year by Georgetown Day School (GDS) as part of its imminent school construction project. The lots for the middle-four rowhouses are virtually identical in dimension; the end lots are larger. These rowhouses sit on the eastern side of 43rd Street NW. This block is bound by Ellicott Street NW to the north, and ends at a fence / gate for GDS that remains closed except for emergency-access vehicles, and therefore creates the impression of the block being a dead-end street, with no vehicular or pedestrian access to the south. These rowhouses comprise all of the structures on the eastern side of the block.

On the western side of this block of 43rd Street are two single-family homes (one and two-stories respectively), and two attached homes (two stories in height). These houses on the western side of the street look across the street at the three-story rowhouses on the eastern side; they have no view of the rear yard of the Property, and therefore *will have no view of the applicant's proposed addition.*

The Property's rowhouse is approximately 24 feet 4 inches wide, facing 43rd Street NW. It is bound to the north by a rowhouse (4823 43rd Street; Lot 0008), to the south by a rowhouse (4819 43rd Street; Lot 0010), to the west by 43rd Street, and to the east by the side of the rear yard of a single-family home (4226 Ellicott Street; Lot 0003). *These lots will each have a partial view of the proposed project on the Property.*

The Property's rear yard is hidden from view from any public street or alley. *There is no street or alley access to the rear of the Property.* Further to the east of the aforementioned Lot 0003 (single-family home on Ellicott Street) is a vacant house in Lot 0004, owned by GDS, and planned for demolition as part of its school construction project. GDS will be erecting an opaque fence to visually screen its property from our homes to the west. *Hence, no one other*

than the immediate neighbors of the Property will be able to see the Applicant's planned addition or rear yard. Note that the aforementioned Lot 0003 immediately to the rear of the Property on Ellicott Street is also at an elevation of 2.5 feet higher than the Property, and has a fence separating our properties that is about 4 feet high (so clearance above the fence is currently about 6.5 feet above the elevation of the applicant's Lot 0009; s we will demonstrate, this difference in grade further obscures the view of Applicant's backyard from Lot 0009).

Although the size of the Property's lot and its building structure are virtually identical to its abutting rowhouse neighbors to the north and south, the footprint of the rowhouse structures are sited in a "staggered" fashion. This means that the rowhouse immediately to the north of the Property (Lot 0008) is about 4 feet further east than the Property's rowhouse structure (i.e., closer to the abutting rear lot); and the rowhouse structure immediately to the south of the Property (Lot 0010) is about 4 feet further west than the Property's rowhouse structure (i.e., closer to Ellicott Street). This means that the Applicant's proposed Project will extend 4 feet further back relative to Lot 0010's rowhouse; so, arguably this is the property owner that would be most affected by the addition. **It is this impact which – we believe -- creates the need for a special exception, wherein our addition and stairs would "extend further than ten (10) feet beyond the farthest rear wall of an adjoining principal residential building" pursuant to D-306.3 (X, 901.2).**

The Property is located in the R-3 Zone in the Tenleytown / AU Park neighborhood of northwest Washington. The surrounding area beyond this block is comprised predominantly of single family homes, attached homes, and rowhouses. To the east, beyond the aforementioned Lot 0003 and its single-family home to the rear of the Property, is the parking lot and structure of the former Tenleytown Safeway, now owned by GDS, and planned for demolition as part of the GDS school building project. Further to the east is a block of 42nd Street without any structures besides

the Safeway and a WMATA chilling plant. Beyond that is Wisconsin Avenue. See **Exhibit 17 Zoning Map**.

B. The Proposed Project and Intended Use

Applicant proposes to demolish its current rear deck and patio, build a one-story addition or “bump-out” abutting the rear of the home, and rebuild a deck immediately on top of the bump-out at virtually the same height as the Property’s current deck. Applicant also intends to build exterior stairs from the deck to the rear yard (see **Exhibit 11 Architectural Designs**). Both immediate neighboring lots currently have rear decks with stairs to their rear yards. The proposed width of the bump-out will be the same as the Property’s existing rowhouse structure, from lot line to lot line (about 24 feet 4 inches). The proposed length of the bump-out is 12 feet and 6 inches from the rear of the Property’s rowhouse structure. This will locate the bump-out 8 feet and 6 inches from the abutting neighbor to the north (Lot 0008), and 16 feet and 6 inches from the abutting neighbor to the south (Lot 0010) (see **Exhibit 9 Site Plan**, which shows the intended plans alongside the neighbors’ lots).

The Property is improved with the structure. Our intended use will be for the purpose of adding a bedroom on the ground level and an extension of the ground-floor family room. We intend to use the bedroom, potentially, as a combined guest room and home office, and also as a future bedroom for applicant’s mother / mother-in-law, who would be too infirm to use stairs at the time she needs to move into the home (other bedrooms are on the third floor). We intend to use the extension of the family room as a “sun room” area (the eastern wall of the planned bump out will have glass windows and doors to let in additional sunlight). [Applicant also plans to build a front porch on the 43rd Street side of the Property, which requires no relief from the BZA.] Applicant explored several design options for reconfiguring of the existing space, but was not

able to come up with any plan that would meet these needs. We wish to emphasize that this addition to our home – which we have been planning for many years -- is not for some minor upgrade to the enjoyment of our home, but is so critically important to our family's quality of life.

Note that we consider the need for stairs from the proposed new deck to the backyard to be critical to our enjoyment of the property, and in keeping with all the other neighbors decks which have deck stairs in their rear yard. Nevertheless, for the convenience of the BZA (and our lack of knowledge about BZA proceedings) we have also included a Backup Architectural Design without stairs (Exhibit 12) and a Backup Site Plan without stairs (Exhibit 10). We presented versions with and without stairs to DCRA in seeking our permits.

V. APPLICANT MEETS THE BURDEN OF PROOF

A. Insubstantially Adverse Effect on Use or Enjoyment of Abutting or Adjacent Dwellings

As demonstrated in the accompanying Architectural Drawings and Color Images, this one-story bump-out project will not have a substantially adverse effect on the use or enjoyment of any abutting or adjacent dwelling or property; the light and air available to neighboring properties will not be unduly affected, and the privacy of use and enjoyment of neighboring properties shall not be unduly compromised. The Property of the Applicant seeking relief faces west to 43rd Street, and the proposed addition would be in the rear yard, facing east -- but at a lower elevation than the rear abutting lot, further to the east – *substantially mitigating the impact of the height of the planned one-story addition*. The abutting properties (east, north, and south) will not be affected by the proposal with regard to air and light because the addition is limited to the first floor plus a roof deck, and the proposed deck over the new addition will be at the same height as the current deck structure, and at roughly the same height as abutting north and south neighbors' decks. There is currently a lot-line

fence separating the applicant's Property from the neighboring lots to the east, north, and south. Applicant will rebuild the north and south lot-line fences; the neighbor to the east intends to replace that fence with a higher fence. Given that the portion of the addition for which relief is required is merely a single story, all adjacent neighbors will have limited visual access over their fences. We provide more detail on the impact on each of these neighbors, below.

Regarding impact to the abutting rowhouses (Lots 0008 and 0010), due to the existing rear decks and side fences of the Property and the abutting lots -- and that this is only a one-story addition that will extend only 12 feet and 6 inches feet from the Property's existing structure (and 16 feet and 6 inches from the most impacted neighbor at Lot 0010) -- the proposed project will have negligible impact on the light and air available to the abutting neighbors' lots. For Lot 0010, for example, the newly added structure will fill in approximately 2.5 feet of wall between the height of the current side fence (separating the lots), and the bottom of the neighbor's current deck (**see Exhibit 14: Color Image #1 and #2**). This minimal additional screening of light and air will then extend 16.5 feet from the rear of the rowhouse in Lot 0010, and 8.5 feet from the rear of the rowhouse in Lot 0008. Note, however, that the decks to the rear of both Lots 0008 and 0010 already extend several feet beyond their rowhouse structures.

The impact on Lot 0010 (arguably the most affected neighbor) will be akin to the impact of a similar addition that was made immediately to the south of Lot 0010, in Lot 0011 (this addition -- highly similar in dimensions to the current project, can be seen in the background of **Exhibit 14: Color Image #2 and #2A**). In addition, as demonstrated by the photo-image exhibits, and our description of these neighbors' non-opposition to the project (below), this project will not unduly compromise the privacy of use and enjoyment of neighboring properties.

Regarding impact to Lot 0003 at 4226 Ellicott Street immediately behind the rear yard of the Property, the applicant's proposed project will have no impact on the light and air available to the

abutting neighbor's' lots, and would have minimal if any impact on privacy and enjoyment. Our bump-out *would not change their light and air*, because the western view from their house and rear yard is currently of the three-story rowhouses, including the current home on the Property, whereas the bump-out would only be one-story high. In addition, this home in Lot 0003 (which is rented out as group home to a commercially-operated, alcohol-and-drug-rehab center) has an existing fence shielding the side of its rear yard from the Property's rear yard. Moreover, because Lot 0003 sits at an elevation of 2.5 feet above the Property, and the top of Lot 0003's current fence is at about 6.5 feet above the Property, much of the new bump-out will be below their elevation, visually (see view from Applicant's lot in **Exhibit 14: Color Image #3**). To assess the impact, **Exhibit 14: Color Image #4** depicts the view of the Property standing in the yard of Lot 0003 at the level of a person standing about 5'10". Whereas **Exhibit 14: Color Image #4A and 4B** are similar views of the Property from the yard of Lot 0003, but from the perspective of holding the camera above the fence for a better view. As one can see, someone standing in Lot 0003 and peering over the fence would see very little of the bump out.

In addition, note that the owner of Lot 0003 is planning to build a new, taller fence between its lot and the rowhouse lots. There was a large magnolia tree on their side of the fence that had *completely* screened their rear yard from our rear yard, except the owner unilaterally cut it down this past year. The owner plans to plant new plantings on her side of the new fence, to further screen our lots for privacy, irrespective of this project. The current view from this lot to the Property's rear is of our existing rear decks and our three-story rowhouse structures, *as well as a partial view of another bump-out previously built at Lot 0011 which has dimensions similar to the applicant's proposed project.*

Perhaps the best representation of the impact on Lot 0003 is **Exhibit 14: Color Images #5A and 5B**, which depict the view while standing in Lot 0003, looking at the aforementioned already

completed addition (and deck and stairs) in the back of our neighbor's rowhouse, two homes down from us in Lot 0011. *We believe that the dimensions of this bump-out will be virtually the same as our planned project.* As one can see in the two photos of the similar bump-out in the other neighbor's yard, the addition is not at all obvious, visually, up against the original rowhouse structure. In sum, due to the three-story height of the rowhouses, the Applicant's proposed one-story bump-out and deck will have no impact on light and air to Lot 0003, and at best *de minimis* (if any) impact on use and enjoyment.

Regarding impact to GDS, due the difference in elevation and the screening of fences and trees and the remaining Ellicott Street Lot 0003 home as a buffer, applicant anticipates that no one on the GDS property will have any view of the Property's planned bump-out, and there will thus be no impact on light and air or use and enjoyment by GDS.

Regarding impact to neighbors on the western side of 43rd Street, none will have any view of the Property's rear yard, and there will thus be no impact on light and air or use and enjoyment.

B. No Visual Intrusion Upon Character, Scale, and Pattern of Houses Along the Subject Street Frontage.

As the proposed one-story addition will be in the rear yard, it will not be visible at all to the street frontage on 43rd Street, and will therefore have no impact on the character, scale, and pattern of houses along subject street. Moreover, behind the Property, there is no rear street, alley, or public way. *Applicant does not anticipate that a member of the public, standing on any public street, would have any view of the Property's rear yard.*

[Furthermore, though it may not be necessary to point out, even if someone could have viewed the rear yard from the street (which, as stated, is impossible), the proposed project would not vary from the character, scale, and pattern of the houses in the neighborhood. There is ample precedent

for similar bump-out structures in the neighborhood, including (as mentioned above) on this very block, two rowhouses to the south, at Lot 0011. As stated, that house has an addition that is virtually identical in dimensions to applicant's proposed project; it adjoins a virtually identical rowhouse two lots to the south; and this project was completed just a few years ago, and was approved by the District.]

C. Support of Neighbors for the Project

Although this will be documented elsewhere in the application, we wish to note that we have socialized this planned project with the abutting neighbors for more than two years, and shared our designs for the rear bump-out several months ago and again very recently. *Applicant has heard of no opposition to the project from any of the abutting neighbors.* Arguably, the most affected neighbor is next door at 4819 43rd Street (Lot 0010), and they not only stated on more than one occasion that they do not oppose the project, but they also signed a form from DCRA granting applicant access to its property for purposes of constructing walls and fences along the lot line. Furthermore, this neighbor has said orally that someday they, too, would like to build a similar bump-out (to ours and their neighbor to the south) to the rear of their home. The most recent time we discussed it was at dinner at their home four weeks ago, in which we discussed our application to the BZA. As for the neighbor most affected by the planned deck stairs (Lot 0008), he reaffirmed his support for the project just a few days ago.

In addition to the immediately abutting neighbors (Lots 0008, 0010, 0003), we intend to: contact our other neighbors in the remaining rowhouses on our block (Lots 0007 and 0011); re-contact the abutting owners of Lots 0008, 0010, and 0003; and also contact the leaseholder representative of Lot 0003. We also intend to contact GDS, which owns: the southernmost rowhouse on the eastern side of 43rd Street (which it plans to replace with a school playground);

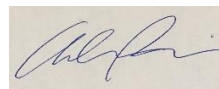
the single-family home on Lot 0004 at 4228 Ellicott Street (which it plans to replace with school greenspace); and the footprint of the former Safeway building (which it plans to replace with a new Lower and Middle School Building, an athletic field, and driveways).

We fully expect all these neighbors to support or not object to our application. We plan to provide written documentation of non-opposition as we receive it. We have also notified our ANC SMD 3E03 representative about the application, and our plan to present it to a full ANC meeting scheduled for July 26, 2018.

V. CONCLUSION

In summation, for the reasons stated (e.g., lack of adverse impact to abutting neighbors; lack of observability of this rear-yard project to any public street or alley; support or non-opposition from neighbors; precedent for a recent, highly similar project on the same block; conformity of the project with the character and scale of the neighborhood; and the modest and highly typical nature of the proposed one-story addition and deck), we ask that the Board grant us special exception relief so that we may build this Project in our home, which is so critically important to our family's quality of life.

Respectfully Submitted,



Adam Rubinson
Susan Weisntein
(Homeowners of 4821 43rd Street NW)