

Revised and submitted on September 30, 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 (Applicant), ask that you please accept our filing for the enclosed application. We request a special exception pursuant to:

1. D-306.4 to construct a one-story rear addition (with a deck on top) 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); and
2. D-306.2 to construct a set of stairs (from the rear deck to ground level in the rear yard) that encroaches 10 feet and 6 inches upon the 20 feet rear yard setback pursuant to D-209.1.

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, pursuant to and D-5201.3, we believe we demonstrate: lack of substantially adverse impact to abutting neighbors; support for 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:

Board of Zoning Adjustment
District of Columbia
CASE NO.19846
EXHIBIT NO.40

1. BZA Form 120, Application for Special Exception
2. BZA Form 126, Fee Calculator
3. **(Revised)** Statement of Burden of Proof – Special Exception (i.e., the document below)
4. **(Revised)** Referral Memo from DCRA to BZA
5. Agent Authorization Letter
6. Pledge of Intent to Contact ANC, OP, and Neighbors
7. Statement of Initial Community Outreach (Efforts Made To-date to Contact ANC, OP, and Neighbors, showing evidence of support) (also see the more current Statement of Neighborhood Support, below)
8. Signed Building Plat
9. Building Plat with DC Atlas
10. **(Revised)** Site Plan (with stairs)
11. Backup Site Plan (without stairs)
12. **(Revised)** Architectural Plans and Details (with stairs)
13. Backup Architectural Plans and Details (without stairs)
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
19. Statement of Neighborhood Support (which updates the content in Statement of Initial Community Outreach, above)
20. Emails of Neighborhood Support (which supplements the Statement of Neighborhood Support, above)

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:

1. 11 DCMR § D-306.4 to construct a one-story rear addition with a deck on top, which 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), and
2. 11 DCMR § D-5201.1 (b) to allow for the construction of stairs (from the rear addition and deck) that encroaches into the minimum 20-foot rear yard required pursuant to D, 306.2 (X, 901.2).

Collectively, the rear addition with deck, and the rear stairs, constitute the “project.”

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 (which applies to both D-306.2 and D-306.4) 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.*

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 our 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 perpendicular side of the rear yard of a single-family home (4226 Ellicott Street; Lot 0003). *These three 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 rear yard, including our planned project.* Note that the aforementioned Lot 0003 immediately to the rear of the Property on Ellicott Street is also at an elevation that is 2.5 feet higher than our Property, and has a fence separating our lots 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; we will demonstrate that 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, further away from 43rd Street); 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 that creates the need for a special exception under D-306.4, wherein our addition would "extend further than ten (10) feet beyond the farthest rear wall of an adjoining principal residential building" pursuant to D-306.3.**

In addition, **the proposed rear stairs create the need for a special exception under D-306.2, as these stairs would encroach 10 feet 6 inches into the “minimum rear yard of twenty feet (20 ft.)”** in the R-3 zone. These stairs will be visible to the abutting neighbors in Lots 0008, 0010, and 0003, though slightly more visible to the owner of Lot 0008, as the stairs will be closest to that lot. As such, we also consider the impact on these neighbors of the stairs.

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 condemned Safeway and a WMATA chilling plant. Beyond that is Wisconsin Avenue. See **Zoning Map attachment.**

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 our 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 Revised Architectural Designs). Both immediate neighboring lots currently have rear decks with stairs to their rear yards, so there is nothing exceptional about rebuilding a rear deck and stairs (Applicant’s Property currently has a deck, and originally had stairs down to the rear yard, but the prior owner of the Property removed the stairs). 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). The stairs would then extend out 14 feet east, beyond the rear wall of the bump-out. (See 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, with some additional closet space. 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 apparently requires no relief from the BZA.] Applicant explored several design options for reconfiguring the space in our existing footprint, 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 and a Backup Site Plan without stairs.

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 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 stairs, 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; whereas 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), and the stairs will extend only 14 more feet beyond that -- 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 **Color Images #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.

Note there is precedent for this impact from a highly similar, already completed project on this block in Lot 0011. The impact on Lot 0010 (arguably the most affected neighbor) will be akin to the impact of Lot 0011's similar rear addition and stairs, which is immediately to the south of Lot 0010. *This rear addition is highly similar in dimensions to the Applicant's Project*, and can be seen in the background of **Color Images #2 and #2A**. One can also see that the *stairs in Lot 0011, which are highly similar in dimensions to the proposed stairs in Applicant's project*, are virtually invisible from Lot 0010's vantage point (see Color Images #2 and #2A), but are visible from Lot 0012's rear yard; see **Color Images #5 and #5A**. In addition, as demonstrated by the photo-image exhibits, and our description of these neighbors' non-opposition to the project (see 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 a 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 **Color Image #3**). To assess the impact, **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 **Color Images #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, but 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 that has dimensions similar to the applicant's proposed project.*

Perhaps the best representation of the impact on Lot 0003 is **Color Images #5A and 5B**, which depict the view while standing in Lot 0003, looking at the aforementioned already completed addition (with 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, 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 project, 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, deck, and stairs that are virtually identical or extremely similar in dimension 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

As demonstrated with supporting documentation in the application, we wish to note that we

have socialized this planned project with the abutting neighbors for more than two years, shared our designs for the rear bump-out and stairs several months ago and again very recently, and have their unanimous support.

Specifically, we demonstrate in the accompanying **Statement of Neighborhood Support** and **Emails of Neighborhood Support**, that we have contacted, showed our plans to, and *received written support for, the project from all neighbors with any view or immediate proximity to the project, including the:*

- Rowhouse owner of Lot 0007 (see **Statement of Neighborhood Support**).
- Rowhouse owner of Lot 0008, which immediately abuts Applicant's lot to the north (see **Statement of Neighborhood Support**).
- Rowhouse owner of Lot 0010, which immediately abuts Applicant's lot to the south (see **Statement of Neighborhood Support**),
- Rowhouse owner of Lot 0011, which immediately abuts Applicant's lot to the south (see **Statement of Neighborhood Support**).
- Single-family home owner of Lot 0003, which immediately abuts Applicant's lot to the east (see **Emails of Neighborhood Support**).
- Single-family home leaseholder of Lot 0003, which immediately abuts Applicant's lot to the east (see **Emails of Neighborhood Support**).
- Georgetown Day School (GDS) (see **Emails of Neighborhood Support**), 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).

This documented, written approval for the project also comports with the:

- Oral approval for the project, stated by all parties, over several months and very recently.
- DCRA form signed by owners of Lot 0010, granting Applicant access to its property for purposes of constructing walls and fences along the lot line.
- Oral statement to Applicant by the owners of Lot 0010 that someday they, too, would like to build a similar project to the rear of their home.
- Supportive oral comments to Applicant from neighbors (including neighbors on the west side of 43rd Street) after they received the official notice of our BZA hearing.

We have also notified our ANC SMD 3E03 representative about the application, and will be presenting to a full ANC meeting scheduled for October 11, 2018.

V. CONCLUSION

In summation, for the reasons stated (e.g., lack of adverse impact to abutting neighbors; lack of any visibility of this rear-yard project to any public street or alley; unanimous support from all impacted 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, deck, and stairs), 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. Thank you.

Respectfully Submitted,

A rectangular grey box containing a handwritten signature in black ink. The signature is cursive and appears to be the name 'Adam Rubinson'.A handwritten signature in black ink, consisting of the initials 'ARW' followed by a long horizontal stroke.

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