

**TESTIMONY OF ELLEN OPPER-WEINER  
TO THE BOARD OF ZONING ADJUSTMENT  
IN OPPOSITION TO BZA CASE #20467  
RE: PROPOSED ADDITION TO 232 10<sup>TH</sup> STREET, SE  
JULY 28, 2021**

TO: Mr. Frederick Hill, Chairperson of the Board of Zoning Adjustment, and the BZA's other members

I am writing in Opposition to the above-listed BZA Case. I have lived continuously in my home at 223 10<sup>th</sup> Street, SE, since Thanksgiving of 1980, where I raised my three (3) children. My home is diagonally across the street from 232 10<sup>th</sup> Street, SE. The neighborhood has always been diverse in terms of age, race, religion, and the variety of families who have lived in their primarily owner-occupied homes. Some families have lived in the neighborhood since the 1960's, and some even before that time. We are a cohesive neighborhood where we all look forward to our Annual Block Party, and many more social events. There is a 30' wide alley between the 200 blocks of 10<sup>th</sup> and 11<sup>th</sup> Streets, SE, where children and dogs play, and where neighbors hold get-togethers and holiday celebrations, such as Halloween. The homes are primarily two stories high, and owner-occupied.

Fortunately, the applicants withdrew their original plans for a three-story addition where there are no three-story homes abutting this alley. Unfortunately, the applicants still propose an addition which is oversized for its location. The applicants want to be able to build a wall extension of 19' abutting 230 10<sup>th</sup> Street, SE, (to the north of the applicants' property), when the current statute only permits at most a 10' extension beyond the building walls of both 230 and 234 10<sup>th</sup> Street, SE, the abutting properties to their building at 232 10<sup>th</sup> Street, SE. The applicants have provided no reason that such a large building wall is necessary for their proposed project. If such a large wall is approved, the current character of the neighborhood will change since no other building wall of that size exists on nearby and/or adjacent properties. It is also likely that it will set an unfortunate precedent for other developers to convert our mostly owner-occupied single-family homes into rental properties, and to build additions with 19' walls which are oversized and out of place in our neighborhood.

Also, the applicants have requested a special exception for a four (4) ft extension to their underground unit as a cellar, which is currently illegally rented and has been for about 20 years. No explanation has been provided by the applicants as to why they have applied for a cellar and not for a basement. When the applicants were asked about the current height of their cellar, there answers were evasive for unexplained reasons, so that this information was never provided to the neighbors.

In fact, the applicants' own Block Plan attachment to their application, C-3, shows how out of place the proposed two (2) story addition will be. However, that Block Plan shows an extension at 228 10<sup>th</sup> Street, SE, which actually is below ground and existed prior to the current owners' purchase. Therefore, this Block Plan is misleading since it implies that the addition at 228 10<sup>th</sup> Street, SE is a two (2) story addition, as is being proposed by the applicants. However,

it is not. See the applicants' Block Plan, C-3, submitted by the applicants, which is attached hereto and incorporated herein as Exhibit #1.

The Applicants have requested in their Application to the BZA dated February 23, 2021, for special exceptions to the lot occupancy requirements (Subtitle E § 304.1), and the rear setback (Subtitle E § 205.4).

The regulation for lot occupancy (Subtitle E § 304.1) states that the maximum lot occupancy for an attached or semi-detached dwelling is 60%.

The Rear Setback Regulation, § 205.4 states: "**a rear wall of an attached or semi-detached building shall not be constructed to extend farther than ten (10 ft.) beyond the farthest rear wall of any adjoining principal residential building on an adjoining property**".

In describing the Special Exception Review Standards, the Applicant fails to define in full the requirements of Subtitle X § 901.2.

The standards are:

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

However, the Applicants did not include Subtitle X § 901.3, which states that "The applicant for a special exception shall have the **full burden to prove no undue adverse impact and shall demonstrate such through evidence in the public record**. If no evidence is presented in opposition to the case, the applicant shall not be relieved of this responsibility. In our opinion the applicant has not met this burden.

Specifically, (a) ***The light and air available to neighboring properties shall not be unduly affected.***

The owners of 228 10<sup>th</sup> Street, SE, pointed out in their written testimony dated July 24, 2021, that "the latest sun study, offered by the applicant 24 hours in advance of the Advisory Neighborhood Committee meeting on July 13<sup>th</sup>, suggests that the most egregious shadowing in the windows of our home would be lessened under this version of the proposal. Indeed, the shadowing at midday now falls just beneath our windows, rather than covering south-facing window exposure at midday as the previous proposals would have." This new sun study is the third offered by the applicants. Previously, the home owners of 228 10<sup>th</sup> Street, SE, when commenting on the applicants' own "sun study" offered on May 20, 2021, stated "our home would be severely impacted by the proposed extension of 232 10<sup>th</sup> Street, SE, during winter months. Shadows resulting from the proposed expansion would fall on our home, shading our windows and possibly our solar panels".

The question is: "which sun study is actually accurate, if any? 228 10<sup>th</sup> Street, SE is located next to the alley entrance across from 230 10<sup>th</sup> Street, SE. See Exhibit #1.

The applicants stated that the proposed additions to 232 10<sup>th</sup> Street will impact the light and air available to 230 10<sup>th</sup> Street *somewhat* without clearly showing how. The impact of the proposed expansion will negatively affect 230 10<sup>th</sup> Street, SE, since the applicant proposes to extend its north wall to 19' from 230 10<sup>th</sup> Street's back wall. That will surely have a negative impact on 230's air and light. Although the requested extension on the south side of 232 10<sup>th</sup> Street, will be slightly more than 10', it still will likely have a negative effect on the air and light available for 234 10<sup>th</sup> Street, SE. The applicants again state that the impact on the light and air of 234 10<sup>th</sup> Street, SE, is *somewhat* because the proposed addition is located north of 234. No meaningful or reliable evidence has been provided by the applicants as required by the Special Exception Review Standards, in particular, the Rear Setback Regulation, § 205.4.

The applicants' "sun/shade study" is deeply flawed which we believe described only limited dates and times which are favorable to the applicants. The Neighbors Group asked the applicants for drawings of the light and shade impact on June 21st after 3:00PM, which were never provided. In addition, no indication of where the applicants intend to put their mechanicals, and if the plan is to place them on their roof, we have not been provided with information regarding what impacts that would have on the neighboring properties. Also, for the sun studies we have received, there is no indication that the location of the neighbors' mechanicals and existing solar panels have been taken into account with regard to their impact on the available light and air on the neighboring properties.

When the Neighbors Group asked the applicants to provide it with the qualifications of the person who performed the sun/shade study we learned that it was their Agent/Architect who produced the study's results. However, she did not provide the Neighbors Group with the nature and extent of her expertise in accurately performing the Sun/Shade study, as we requested. There is some question as to whether or not she is fully qualified to accurately perform these studies, especially due to the fact that three (3) different sun studies were provided by the applicants, as evidence for their position.

Also, with regard to the "Neighbors to the East", the applicants did not provide the Neighbors Group with the required evidence that the impact on the Neighbors to the East will be minor.

In discussion with the neighbors, it is agreed that, **the proposed addition will unduly affect the neighboring properties available light and air.**

***(b) The privacy and use and enjoyment of neighboring properties shall not be unduly compromised.***

The applicants state that the impact of the proposed addition will have a **minor impact** on the privacy and use and enjoyment of 230 10<sup>th</sup> Street, and 234 10<sup>th</sup> Street, SE, and yet provided insufficient plans, photographs, or elevation and section drawings to substantiate their assertion. In fact, such a large massive development on the 200 block of 10<sup>th</sup> Street, SE, will **"stick out like a sore thumb"** in a block of rather consistent architecture and size. There are no other houses on the eastside of the 200 block of 10<sup>th</sup> Street, SE, with such a deep two-story extension, as is proposed. Most of the houses on the north side of the 200 block of 10<sup>th</sup> Street, SE, do not have garages nor parking spaces, and their backyards are used for social

gatherings and family celebrations. Some of the homes on the south side of the 200 block of 10<sup>th</sup> Street, SE, have garages but many of the houses have backyards which are used for their private gatherings. Therefore, their privacy will likely be comprised by the size of the proposed two-story development of such depth.

Again, the applicants state that the impact on the privacy of the use and enjoyment will have only a **minor** effect on the Neighbors to the East, without addressing the current uses of the alley, nor providing any evidence for the record to support this contention.

In discussions with the neighbors, it is agreed that, **the proposed addition will unduly compromise the privacy and use and enjoyment of the neighboring properties.**

**(c) The addition or accessory structure, together with the original building, as viewed from the street, alley, and any other public way, shall not substantially visually intrude upon the character, scale, and pattern of houses along the subject street frontage.**

The applicants state that their proposed development will not be viewed from the street, but it can be viewed from most of the houses which abut the alley. The applicants state that their proposed development will not substantially visually intrude upon the character, scale, and pattern of houses along the street frontage. However, the proposed development will do just that when it is viewed from the many houses which abut the alley. The alley is a public space.

The proposed addition will look and be significantly out of place, because it does not fit in with the character, scale, and pattern of houses on the southern section of the 200 block of 10<sup>th</sup> Street, SE. Further, it would be the only two-story building of such depth abutting nearly the entire alley. It would be the only building to extend so far beyond the existing neighbors' houses.

The residents of the 200 block of 11<sup>th</sup> Street, SE can see across the alley since there are only a very few two-story buildings blocking their views of the houses on the 200 block of 10<sup>th</sup> Street, SE. The applicants' proposed addition will certainly substantially visually intrude upon the character, scale, and pattern of the existing backyards as viewed from the alley, from both the 200 blocks of 10<sup>th</sup> and 11<sup>th</sup> Streets, SE. Both 10 and 11<sup>th</sup> Street and the 1000 block of Independence Avenue, have very consistent frontage and mostly consistent rear spaces.

In discussion with the neighbors, it is agreed that, **the proposed addition together with the original building, as viewed from the alley substantially intrudes upon the character, scale, and pattern of houses abutting the alley.**

**(d) In demonstrating compliance with paragraphs (a), (b) and (c) of this subsection, the applicant shall use graphical representations such as plans, photographs, or elevation and section drawings sufficient to represent the relationship of the proposed addition or accessory structure to adjacent buildings and views from public ways**

Although the applicants did provide some plans, drawings, and photographs these were insufficient to represent the actual relationship of the proposed addition to adjacent and

neighboring buildings and views from the public alley. This 30' wide alley is rather unique on Capitol Hill, and in the Capitol Hill Historic District. There is very little truck and vehicle traffic because it is solely a residential neighborhood. Further, there are a small number of parking garages and parking spaces in that alley. Therefore, the alley is used regularly as an area where children and dogs play, and families have social get-togethers and celebrate holidays in the alley space.

In fact, the applicants' Site Plan, C-4, which is attached hereto and incorporated herein as Exhibit # 2, is unclear and actually confusing to those of us unfamiliar with reading architectural plans. It is difficult to discern why the applicants intend to remove the existing rear sunroom at 232 10<sup>th</sup> Street, SE; why they intend to create a 19' building wall facing north on the side of 230 10<sup>th</sup> Street, SE?; why is a 2-story cellar rear addition proposed?; what will the proposed landing and steps to grade for the cellar for the cellar enclosed below actually mean for their proposal?; and what is an areaway?. To date, none of these questions have been fully nor clearly answered by the applicants.

There is another fact of interest in this case, in that all three (3) of the homes in question, the applicants' home at 232 10<sup>th</sup> Street SE, and the two (2) abutting homes: 230 10<sup>th</sup> Street, SE and 234 10 Street, SE, are not owner-occupied unlike the very large majority of the homes within 200 feet of the proposed project at 232 10<sup>th</sup> Street, SE. John Cassell, son of the titled owner to 230 10<sup>th</sup> Street, SE, and the manager of this rental told me that he has no intention of not continuing to rent that home. The applicants have requested a 2-flat rental, and 234 10<sup>th</sup> Street, SE, is also a rental. See PHN addressed to James M Sherry, "return to sender, noted; not deliverable as addressed, unable to forward", who is listed as the owner of 234 10<sup>th</sup> Street, SE. See Exhibit #3 which is attached hereto and incorporated herein, and is also listed in the BZA's IZ system as Exhibit # 71. Apparently, Mr. Sherry does not currently reside at 234 10<sup>th</sup> Street, SE.

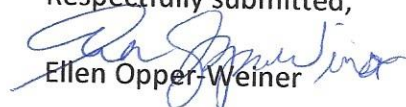
The question is: Should current home owners who rent their homes rather than the owners of owner-occupied homes, as is primarily the case in our neighborhood, have the dominant say as to what is good and appropriate for our neighborhood?

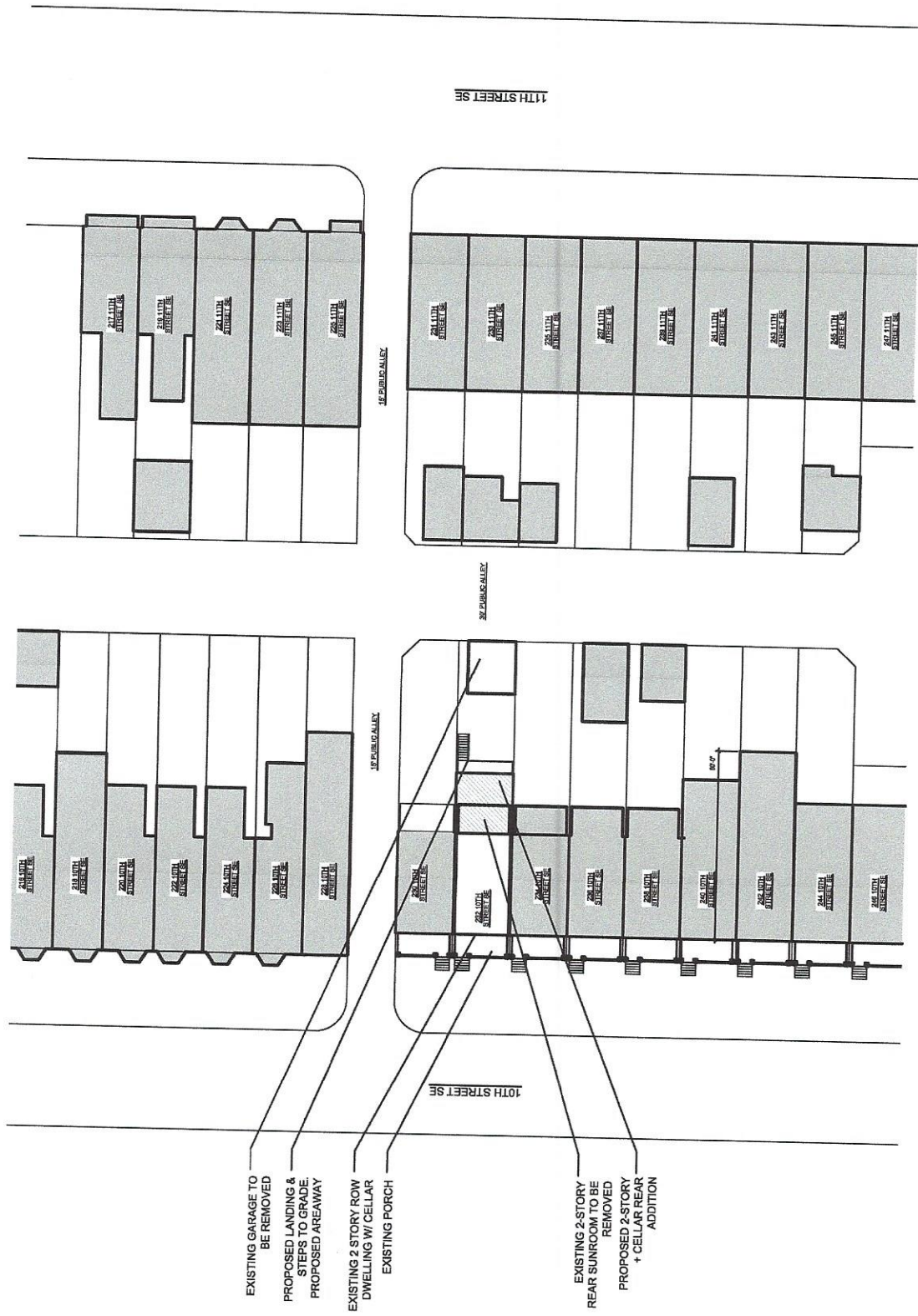
**IN CONCLUSION**, in discussion with the neighbors, it is agreed, that the applicants have not met their burden for the relief requested, as detailed in Subtitle E § 504.1, lot occupancy nor Subtitle § 205.4, rear set back.

Nor did the applicants meet the Special Exception Review Standards as detailed above in Subtitle E § 5201.4 (a-d), **because they did not demonstrate that the addition shall not have a substantially adverse effect on the use and enjoyment of any abutting or adjacent dwelling or property.** See: Subtitle E § 5201.4 (a)(b)(c)(d).

Therefore, the applicants' requests for Special Exceptions should be denied since the applicants have not met their burden for special exceptions to the lot occupancy requirements (Subtitle E § 304.1), and the rear setback (Subtitle E § 205.4).

Respectfully submitted,

  
Ellen Opper-Weiner



- EXISTING GARAGE TO BE REMOVED
- PROPOSED LANDING & STEPS TO GRADE. PROPOSED AREAWAY
- EXISTING 2 STORY ROW DWELLING W/ CELLAR EXISTING PORCH
- EXISTING 2-STORY REAR SUNROOM TO BE REMOVED
- PROPOSED 2-STORY + CELLAR REAR ADDITION

BLOCK PLAN  
SCALE: 1/32" = 1'-0"

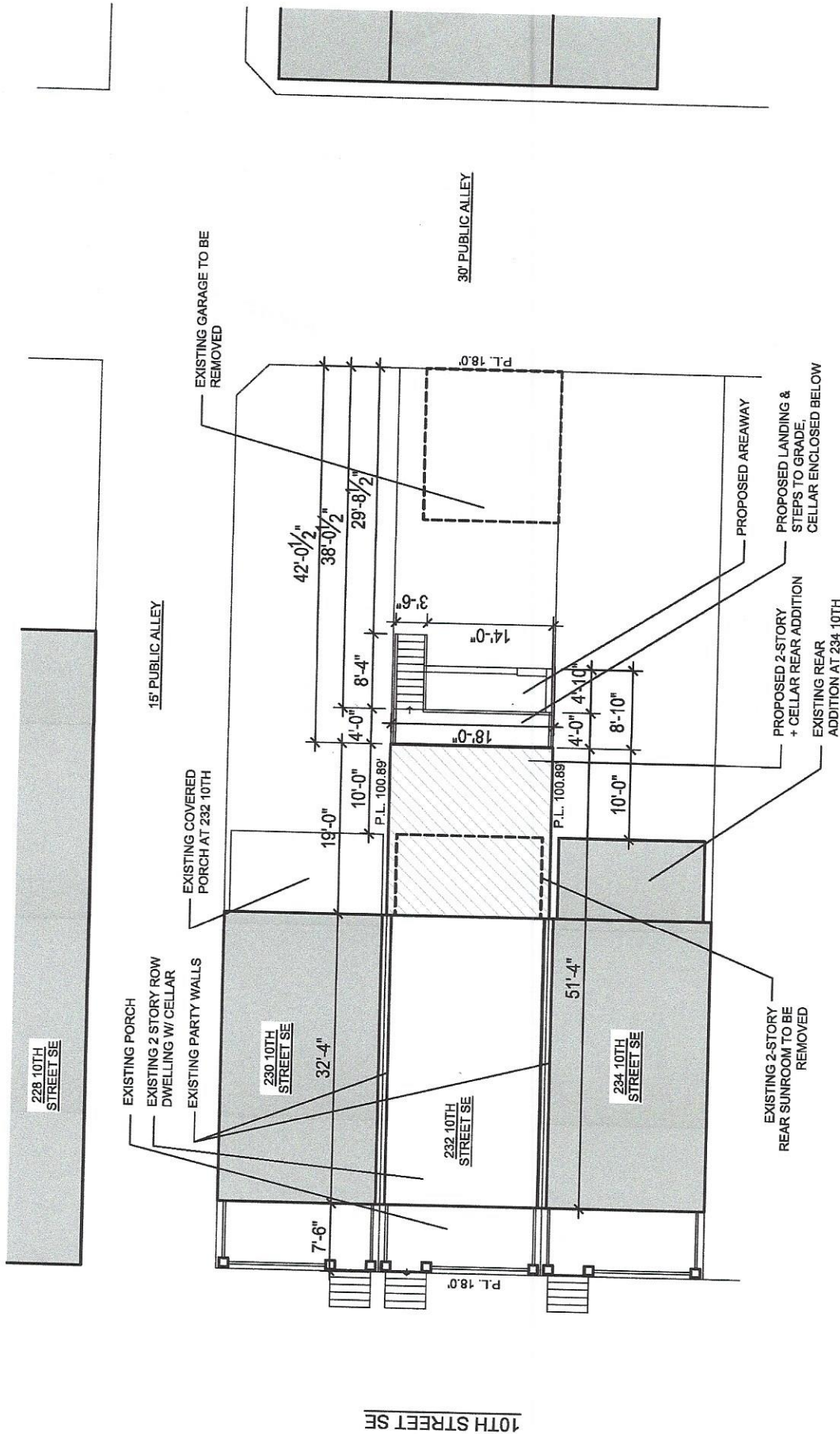


C-3

232 10th Street SE – BLOCK PLAN

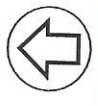
EXHIBIT # 1

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SITE PLAN

SCALE: 3/32" = 1'-0"



C-4

232 10TH Street SE – SITE PLAN

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EXHIBIT

#2

RECEIVED  
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GOVERNMENT OF THE DISTRICT OF COLUMBIA  
Board of Zoning Adjustment

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March 2, 2021

**TO WHOM IT MAY CONCERN:**

**BZA Application No. 20467**

The Board of Zoning Adjustment (Board or BZA) will consider the following application during the virtual public hearing session scheduled for **Wednesday, May 26, 2021 beginning at 9:30 a.m.**, via WebEx:

Application of: **Geoff Anderson and Harriet Tregoning**  
Case No.: 20467  
Address: 232 10th Street S.E. (Square 969, Lot 83)  
ANC: 6B

Relief: Special Exception from:

- the rear addition requirements of Subtitle E § 205.4 (pursuant to Subtitle E §§ 205.5 and 5201 and Subtitle X § 901.2)
- the lot occupancy requirements of Subtitle E § 304.1 (pursuant to Subtitle E § 5201 and Subtitle X § 901.2)

Project: To construct a three-story addition with cellar and roof deck, to an existing, attached, two-story principal dwelling unit, in the RF-1 Zone.

**PLEASE NOTE REGARDING THE HEARING SCHEDULE:**

There is the possibility this case may be **RESCHEDULED OR WITHDRAWN** prior to the scheduled hearing date noted above. Therefore, it is important to confirm the hearing date, especially the day prior to the scheduled hearing. To confirm, visit the online BZA calendar at <https://dcoz.dc.gov/BZACalendar>. The line-up of cases on the hearing agenda and any scheduling changes to the case will be posted to the BZA calendar the day before the hearing.

Those who wish to testify at the hearing are responsible for being present when their case is called. The published line-up of cases may change on the hearing day at the Board's discretion. Therefore, it is recommended that participants arrive at 9:30 a.m. to hear the case line up. Participants may also visit <https://dcoz.dc.gov/onlineServices/webcast> to listen to the live broadcast of the hearing starting at 9:30 a.m. to hear the case line-up and may listen periodically throughout the hearing to see which case the Board is hearing at any point in time.

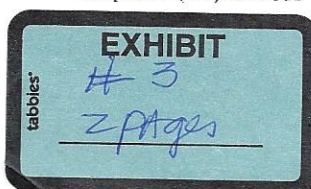
441 4<sup>th</sup> Street, N.W., Suite 200/210-S, Washington, D.C. 20001

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Board of Zoning Adjustment  
District of Columbia  
CASE NO. 20467  
EXHIBIT NO. 71



GOVERNMENT OF THE DISTRICT OF COLUMBIA  
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WASHINGTON, D.C. 20001  
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JAN M SHERRY  
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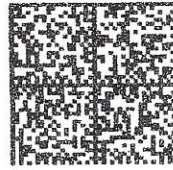
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