

MEMORANDUM

TO: District of Columbia Board of Zoning Adjustment

FROM: Matt Jesick, Case Manager
JL Joel Lawson, Associate Director Development Review

DATE: December 2, 2016

SUBJECT: BZA #19355 – 600 9th Street, NE – Variance relief to permit pre-existing decks to remain

I. RECOMMENDATION

With regard to this proposal to allow pre-existing decks to remain, the Office of Planning (OP) recommends **denial** of the following requested variance relief:

- C § 202.2 Additions to Nonconforming Structures (Addition must conform to development standards and must not create or extend a nonconformity; Decks extend nonconforming lot occupancy and rear yard);
- E § 304 Lot Occupancy (60% permitted; 100% on ground floor prior to deck construction; 100% on upper stories with decks);
- E § 306 Rear Yard (20’ required; 0’ on ground floor prior to deck construction; 0’ on upper floors with decks).

On page two of Exhibit 13, the applicant states that they request a special exception pursuant to Subtitle E § 5201. That section, however, is not applicable because the lot occupancy of the building is over 70%.

II. LOCATION AND SITE DESCRIPTION

Address	600 9 th Street, NE
Legal Description	Square 913, Lot 800
Zoning	RF-1
Ward and ANC	6, 6A
Historic District	None
Lot Characteristics and Existing Development	Rectangular corner lot 19’ x 60’. Existing three-story rowhouse which fronts on 9 th Street; Driveway to the garage is from F Street; The building, including the garage, has 100% lot occupancy and a 0’ rear yard on the ground floor; At some point in the past a previous owner constructed decks, without

	permits or zoning approvals, on the second and third floors, above the garage and the rear part of the second floor, which resulted in 100% lot occupancy and 0' rear yard on the upper stories.
Adjacent Properties and Neighborhood Character	The subject square is characterized by dense rowhouse development, as are most surrounding squares; The square across 9 th Street is the site of a school and recreation center; The property to the west has a narrow side yard – 4'9" wide according to that owner – abutting the subject site; A number of windows on that property face toward the subject site; The property to the north is also a rowhouse.



III. PROJECT DESCRIPTION IN BRIEF AND ZONING REQUIREMENTS

The subject site is zoned RF-1. The applicant seeks approval to allow the existing decks to remain on the property, which would require relief as noted in the table below.

Item	Requirement	Existing Without Decks	Existing With Decks	Relief
Lot Area E § 201	1,800 sf	1,140 sf	No change	Existing Nonconforming
Lot Width E § 201	18'	19'	No change	Existing Nonconforming
Height E § 303	35', 3 stories	3 stories, height not provided	No change	Assumed Conforming

Item	Requirement	Existing Without Decks	Existing With Decks	Relief
Lot Occupancy E § 304	60% max.	100% ground floor* 85% second floor* 75% third floor*	No change – ground floor* 100% second floor* 100% third floor*	Requested
Rear Yard E § 306	20' min.	0' ground floor* ~9' second floor* ~15' third floor*	No change – ground floor* 0' second floor* 0' third floor*	Requested
Side Yard E § 307	None required	None	None	Conforming
C § 202.2	Cannot extend an existing non-conformity	Nonconforming lot occupancy and rear yard	Decks extend nonconforming lot occupancy and rear yard	Requested

*Data not provided with the application; Estimated by OP.



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Image of subject site from the south.

IV. ANALYSIS

In order to be granted a variance, the application must meet the three-part test described in X § 1000.

1. Exceptional Situation Resulting in a Practical Difficulty

The subject property is impacted by the exceptional condition that there are existing, non-permitted decks that existed when the current owner purchased the property. The situation is also exceptional in that, according to the applicant, the previous owner, a bank, did not disclose at the time of purchase the non-permitted nature of the decks. These exceptional conditions result in a practical difficulty because without variance relief, the applicant would incur costs necessary to remove the decks, and would also lose recreation space on the property that was anticipated when purchasing the home.

2. No Substantial Detriment to the Public Good

The decks may present an undue impact to adjacent residents, who have an anticipation of some degree of setback from property lines based on lot occupancy and rear yard limits. In this case, the existing structure extended to the rear property line at the ground floor, but neighbors could reasonably expect that such significant expansions to the building as the decks would not be permitted on the second and third floors. The decks, built to the property line, seem to create a notable negative impact on the light, air and privacy available to the property to the west, which has windows facing toward the decks. A strong degree of additional shadow is also created on the property to the north.

3. No Substantial Harm to the Zoning Regulations

Many rowhouse neighborhoods in the District have limited direct light available to rear yards and side windows, especially in situations such as this with an intervening street, Pickford Place, creating very small lots between 8th and 9th Streets. In this case, however, with a 100% lot occupancy, and especially 100% lot occupancy at the second and third stories, the impacts seem to harm the intent of the Regulations to support livable neighborhoods through the provision of adequate light, air and privacy.

The Office of Planning sympathizes with the applicants, who, by their account, seem to not have had the advantage of an adequate property disclosure at the time that they purchased their home. If the Board considers granting the variances, OP recommends conditions that would require visual screening of the decks, as well as aural screening of the HVAC equipment immediately above the garage. The Board could also examine a partial approval of some portion of the two decks, with the same caveats regarding privacy and noise.

V. COMMUNITY COMMENTS

As of this writing OP has received no comments from the community. The applicant has a meeting scheduled with the ANC, and neighbor has submitted to the record a request for party status in opposition.