



## MEMORANDUM

**TO:** District of Columbia Board of Zoning Adjustment

**FROM:** Jennifer Steingasser, Deputy Director Development Review & Historic Preservation

**DATE:** May 11, 2009

**SUBJECT: BZA Case 18063** - Request for special exception relief under § 223 for a three-story rear deck at 3420 13<sup>th</sup> Street, NE.

### **I. OFFICE OF PLANNING RECOMMENDATION**

The Office of Planning (OP) recommends **denial** of the requested special exception pursuant to §223, to permit the addition of a three-story rear deck at 3420 13<sup>th</sup> Street, NE that does not meet the lot occupancy, rear yard and court width requirements. The proposal impacts negatively the light, air, privacy and security of adjacent residents.

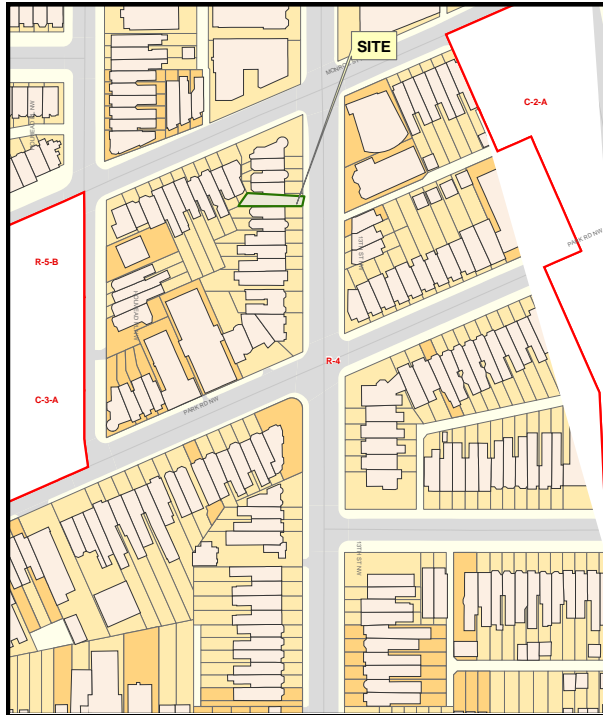
### **II. LOCATION AND SITE DESCRIPTION:**

Address:	3420 13 <sup>th</sup> Street, NE
Legal Description:	Square 2838, Lot 25
Ward:	Ward 1, ANC- 1A
Lot Characteristics:	The property is generally rectangular in shape and angled rear property line and does not have an alley to its rear.
Zoning:	R-4 – detached, attached, semi detached, single family dwellings and flats.
Existing Development:	Attached, row dwelling with two flats.
Historic District:	N/A
Adjacent Properties:	Attached and semi-detached row houses.
Surrounding Neighborhood Character:	Similar to the subject property, the surrounding community is developed with attached and semi-detached row houses.

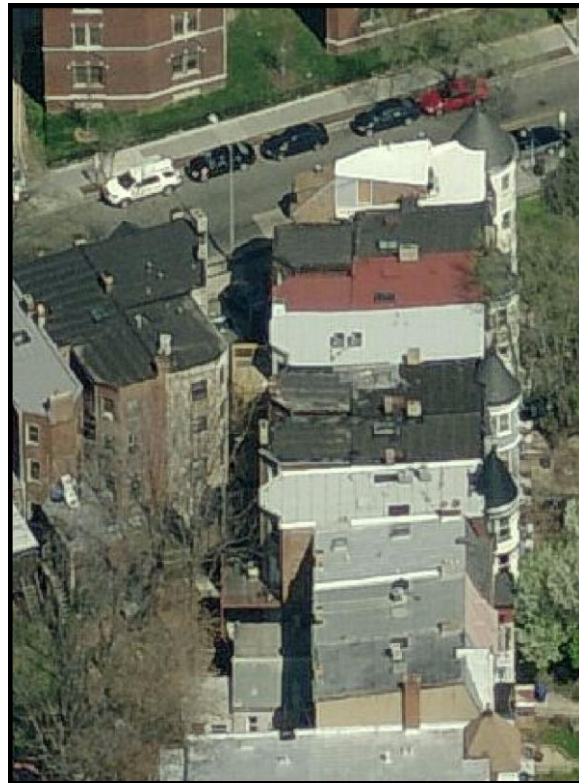
### **III. PROJECT DESCRIPTION IN BRIEF**

Proposal:	The applicants have added decks on 3 floors to the rear of the building. The addition increases the lot occupancy, decreases the rear yard and does not meet the minimum court width.
Relief Sought:	§223 – Additions to One-Family Dwellings or Flats (R-1) and for New or Enlarged Accessory Structures





Site Location



Aerial Photograph

#### IV. ZONING REQUIREMENTS

The subject property is in the R-4 district. The R-4 district is designated for “. . . areas now developed with row dwellings . . .”

The table below shows the zoning requirement for the R-4 district and how they are met by the existing and proposed building:

R-4 Zone	Regulation	Existing	Proposed	Relief:
Height (ft.) § 400	3 stories	3 stories	3 stories	None required
Lot Width (ft.) § 401	18 ft. min.	17 ft.	17 ft.	1 ft. (existing)
Lot Area (sq.ft.) § 401	1,800 sq. ft. min.	1,368.3 sq .ft.	1,368.3 sq. ft.	432 sq. ftp. (existions)
Floor Area Ratio § 401	None prescribed	N/A	N/A	None required
Lot Occupancy § 403	60% max.	62.2%	62.2%	<b>2.2%</b>
Rear Yard (ft.) § 404	20 ft. min.	6 ft.	6 ft.	<b>14 ft.</b>
Side Yard (ft.) § 405	N/A	N/A	N/A	N/A
Court § 406	10 ft. min.	4 ft.	4 ft.	<b>6 ft.</b>

The Office of Planning (OP) staff visited the site and has concerns that the lot occupancy and rear yard setback information stated by the applicant may be incorrect. OP will continue to work with the applicant to address this concern prior to the public hearing.

#### V OP ANALYSIS:

The applicant obtained a referral letter from the Office of the Zoning Administrator which stated that the applicant should seek variance relief from Section 403.2, lot occupancy; Section 404.1, rear yard; and Section 406.1, closed court. The applicant’s submission to the BZA requested variance relief from the referenced section or in the alternative, special exception review under Section 223. OP believes that the relief requested is allowed to be reviewed under Section 223 and as such our analysis addresses only the requirements of Section 223.

As seen on the table above, the lot does not meet the minimum lot area, lot width, lot occupancy, rear yard and closed court requirements as currently prescribed for the R-4 district. The deck addition affected the lot occupancy, rear yard and the closed court.

#### § 223 ZONING RELIEF FOR ADDITIONS TO ONE-FAMILY DWELLINGS OR FLATS (R-1) AND FOR NEW OR ENLARGED ACCESSORY STRUCTURES

**223.1** *An addition to a one-family dwelling or flat, in those Residence districts where a flat is permitted, or a new or enlarged accessory structure on the same lot as a one-family dwelling or flat, shall be permitted even though the addition or accessory structure does not comply with all of the requirements of §§ 401, 403, 404, 405, 406, and 2001.3 shall be permitted as a special exception if approved by the Board of Zoning Adjustment under § 3104, subject to the provisions of this section.*

Row dwellings and flats are a permitted use in the R-4 zone. Under § 2001.3, the property has a nonconforming structure with a conforming use. As shown in the table above the structure is nonconforming in the areas of lot area, lot width, lot occupancy, rear yard and open court. The addition of the decks has extended the nonconformity of lot occupancy, rear yard and the open court. Section 223 allows special exception review of the variations from the requirements, subject to the provision of §§ 223.2 to 223.5:

**223.2** *The addition or accessory structure shall not have a substantially adverse affect 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;*

The three story deck structure has been constructed without a permit. OP visited the site and viewed the decks from the adjacent property at 1300 Monroe Street, NW. OP observed that the deck were very close to the adjacent windows on all floors. They provided direct views into private living areas, resulting in windows were being kept covered and thus reducing light and air into the residence. There is also a concern for security due to the small distance between the deck and the windows access from the deck through the adjacent windows could be easily gained.

- (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; and*

The decks can be viewed from Monroe Street but they are set back and so would significantly not intrude upon the scale and character and pattern.

- (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.*

The applicant has provided graphical representations in the form of plans, photographs and drawings that sufficiently represent the proposed addition, in relation to adjacent buildings and as viewed from public ways.

**223.3** *The lot occupancy of all new and existing structures on the lot shall not exceed fifty percent (50%) in the R-1 and R-2 Districts or seventy percent (70%) in the R-3, R-4, and R-5 Districts.*

The proposed lot occupancy, at 62.2% does not exceed the 70% allowed in the R-4 district. However, the applicant has to demonstrate that the lot occupancy is actually 62.2%.

**223.4** *The Board may require special treatment in the way of design, screening, exterior or interior lighting, building materials, or other features for the protection of adjacent and nearby properties.*

The applicant has verbally stated that they are willing to mitigate the impact of the decks through the use of privacy screening. However OP has not received any information for further analysis.

**223.5** *This section may not be used to permit the introduction or expansion of a nonconforming use as a special exception.*

The residential use of the property is a conforming use in the R-4 district.

## **VI COMMUNITY COMMENTS**

The subject property is within Ward 1A. To date, the proposal had not been reviewed by the ANC.

## **VII SUMMARY AND RECOMMENDATION**

The Office of Planning (OP) recommends **denial** of the decks. The decks as built, intrude on the privacy, light, air and security of the neighboring residents and therefore do not meet the standards of Section 223