

GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
OFFICE OF THE ZONING ADMINISTRATOR

February 2, 2015



Kinley R. Bray, Esq.
Griffin, Murphy, Moldenhauer & Wiggins, LLP
1912 Sunderland Place NW
Washington DC 20036

Re: 2942 Newark Street NW

Dear Ms. Bray:

Pursuant to our discussion on January 20, 2015 regarding the above-referenced property, I have reviewed your request for a determination of whether the proposed addition to the first floor of the property may be constructed on an existing deck constructed under the authority of a variance from lot occupancy granted by the Board of Zoning Adjustment in 1980. As we discussed and agreed, the property is deemed conforming with respect to the area variances granted by the BZA, and therefore the proposed addition (which does not alter the footprint of the structure as approved under the BZA Order) is permitted as a matter of right. My analysis follows below.

The Property is subject to an order of the Board of Zoning Adjustment granting rear yard and lot occupancy variances to accommodate two decks, one of which the owners now seek to enclose at the first floor level. In BZA Case No. 13326, attached as Exhibit A, the Board noted that the Property is improved with a three story detached single family dwelling constructed in the early twentieth century. The applicant in that case sought to construct two decks at the level of the first floor of the house, one along the side of the existing house (maintaining a compliant eight foot side yard), and one extending eleven and one-half feet from the rear of the existing house into the rear yard. In addition to a variance for the extension of the deck into the required rear yard, the proposed deck locations at the first floor elevation were required to be included in lot occupancy, resulting in a total lot occupancy of approximately 48%. The Board granted the requested rear yard variance (15.83 feet) and lot occupancy variance (322.23 square feet, or a total of 48% lot occupancy).

In 1998, a previous owner of the Property obtained a permit for the alteration of the structure to allow the enclosure of the area below the existing decks (constructed pursuant to the 1980 variance). This renovation, designed by Hamilton Snowber Architects, was permitted as a

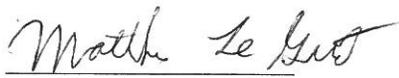
matter of right after consultation with several zoning officials at DCRA, including Acting Director Gladys Hicks. See correspondence attached at Exhibit B. Like the proposed addition, the 1998 renovation involved no change to the footprint of the building, and therefore did not impact building area or lot occupancy.

The current owners of the Property wish to renovate the home on the Property again, and have proposed a first floor addition utilizing the existing deck at the first floor level that would allow for the enlargement of the kitchen and reconfiguration of the entrance foyer to the original 1905 design. I have reviewed the plans for the proposed addition attached at Exhibit C. The addition would not extend beyond the footprint of the existing side deck, and the building would continue to comply with the side yard setback along that side of the Property. With the exception of a new stair to accommodate the restored front entrance, no other changes to the footprint of the existing home are proposed.

Although the Property currently exceeds the maximum permitted percentage of lot occupancy in the R-1-B Zone, the proposed lot occupancy is identical to that approved by the Board of Zoning Adjustment in Case No. 13326 (48% or a total building footprint of 2,076.63 square feet). As such, the lot occupancy is treated as conforming, and therefore the addition can be constructed as a matter of right.

As the Board of Zoning Adjustment has recognized, “[A] use approved by a variance or special exception ‘becomes a conforming use and otherwise partakes to a large degree the character of a vested right running with the land.’ *Appeal of Koo L. Yuen*, BZA Case No. 17988, *citing* Anderson, American Law of Zoning, §§ 6.1, 20.2 (4th ed.) and *Industrial Lessors, Inc. v. Garfield*, 119 N.J. Super. 181, 290 A.2d 737 (1972), cert. denied, 61 N.J. 160, 293 A.2d 390. The BZA approved a variance from lot occupancy and rear yard requirements on this Property in an unconditional order in 1980, thereby conferring conforming status on the Property. As lot occupancy and rear yard have not changed, and the Property is otherwise conforming to both use and area requirements of the R-1-B Zone District, it follows, then, that any addition or alteration to the property that does not create a nonconformity, as is shown in the plans I have reviewed, will be permitted as a matter of right.

Should you have any questions about this determination, please do not hesitate to contact me.

Sincerely, 
Matthew Le Grant
Zoning Administrator

Attachments: Exhibits A-E

File: Det Let re 2942 Newark St NW to Bray 2-2-15