

JOHN COOPER  
MAYOR



**METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY**

Metropolitan Historic Zoning Commission  
Sunnyside in Sevier Park  
3000 Granny White Pike  
Nashville, Tennessee 37204  
Telephone: (615) 862-7970

**STAFF RECOMMENDATION**

**1408 B Boscobel Street**

**May 19, 2021**

**Application:** New Construction--Addition; Setback Determination/Violation  
**District:** Lockeland Springs-East End Neighborhood Conservation Zoning Overlay  
**Council District:** 06  
**Base Zoning:** R6  
**Map and Parcel Number:** 083130G00200CO  
**Applicant:** James Williams Dunn and Windle Houge Morgan  
**Project Lead:** Paul Hoffman; [paul.hoffman@nashville.gov](mailto:paul.hoffman@nashville.gov)

<p><b>Description of Project:</b> A rear deck/carport has been constructed without a permit and which encroaches into the twenty foot (20') rear setback.</p> <p><b>Recommendation Summary:</b> Staff recommends disapproval of the setback determination, finding that it does not meet Section II.B.3 of the <i>Lockeland Springs-East End Neighborhood Conservation District: Handbook and Design Guidelines</i>. Staff recommends that the unpermitted structure is removed within sixty days (60 days) of the Commission's decision.</p>	<p><b>Attachments:</b> A: Public Comment B: Applicant's submittal</p>
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## Vicinity Map:



## Aerial Map:



## **Applicable Design Guidelines and Ordinances:**

### **II.B. New Construction**

#### **3. Setback and Rhythm of Spacing**

The setback from front and side yard property lines established by adjacent historic buildings must be maintained. When a definite rhythm along a street is established by uniform lot and building width, infill new buildings should maintain that rhythm.

*The Commission has the ability to reduce building setbacks and extend height limitations of the required underlying base zoning for new construction, additions and accessory structures (ordinance no. 17.40.410).*

*Appropriate setback reductions will be determined based on:*

- The existing setback of the contributing primary buildings and accessory structures found in the immediate vicinity;*
- Setbacks of like structures historically found on the site as determined by historic maps, site plans or photographs;*
- Shape of lot;*
- Alley access or lack thereof;*
- Proximity of adjoining structures; and*
- Property lines.*

*Appropriate height limitations will be based on:*

- Heights of historic buildings in the immediate vicinity*
- Existing or planned slope and grade*

*Infill construction on the 1400 - 1600 blocks of Boscobel Street may have widths up to 40'.*

Setback Review by Metro Codes: Based on review with ZA it is determined that a 20 ft rear setback would be required. If the deck can be designed to comply with section 17.12.040 E27 a reduced rear setback would be allowed.

*17.12.040 E27: An uncovered deck that is located at least ten feet from the rear property line, does not encroach on required side setbacks and has a maximum deck elevation no greater than the average finished first floor elevation of the principal building as established by the front entrance.*



Figure 1: The rear deck at 1408 B Boscobel Street on January 25, 2021

**Background:** The duplex at 1408 Boscobel Street was constructed in 2013, shortly before the Lockeland Springs - East End Neighborhood Conservation Zoning Overlay was expanded to include this block, so the MHZC did not review this infill.

A permit for a rear deck was begun in December 2020 but never completed and paid for. A note in City Works states that a site plan is needed.

As constructed, the deck intrudes on the twenty feet (20') rear setback. A notice of violation was sent to the property owners on January 28, 2021. Rather than correct the violation, the applicant wishes to ask the Commission to retain the deck.

A public hearing was held on May 21, 2021 and the case was deferred.

### **Analysis and Findings:**

The deck itself (materials and design) does not require MHZC review as it is a rear addition that cannot be seen from the street and is located within the triangular area, shown in the design guidelines, as not requiring a permit. A permit from the Codes Department is required. As constructed, the deck intrudes into the twenty foot (20') rear setback by ten feet (10'). The Codes Department has confirmed that when a deck exceeds the height of the first floor, a 20' rear setback is required (17.12.040 E27) In an historic overlay it is the MHZC that makes setback determinations.

This particular block of Boscobel Street has very little remaining historic context; however, the few contributing houses nearby sit well within the twenty foot (20') rear setback, as do the newer infill structures.



Figure 2: Aerial of block from before construction of the rear deck. Immediately to the left is the location of a similar request that was disapproved. On far left is 1400 Boscobel, the only contributing house.

The Commission's ability to reduce setbacks is so that it can easily address historic conditions. This property has no existing historic conditions. A similar request at 1406 Boscobel Street was denied in August 2020. Staff does not see a compelling reason for the decks to be allowed within the setback and finds that the proposal does not meet Section II.B.3. of the design guidelines.

**Recommendation:** Staff recommends disapproval of the setback determination, finding that it does not meet Section II.B.3 of the *Lockeland Springs-East End Neighborhood Conservation District: Handbook and Design Guidelines*. Staff recommends that the unpermitted structure is removed within sixty days (60 days) of the Commission's decision.

## ATTACHMENT A: PUBLIC COMMENT

From: Lauren Palmore  
Sent: Monday, April 19, 2021 2:59 PM  
To: Historical Commission <historicalcommission@nashville.gov>  
Subject: 1408 Boscobel unit B addition

To whom it may concern,

My name is Lauren Worthey. My husband, Phil and I are writing to inform you of our approval of our neighbor, James' and Wendell's, recent outdoor addition of their deck and patio. We have lived at 1406A Boscobel street for the last 6 years. We were so happy to see this improvement on our street. In fact, we are so pleased with its appearance, we believe it to be an asset to our neighborhood and specifically our street. Although our request to extend our second story outdoor patio was denied, we have no objection to the successful completion of our neighbors' construction project. I feel it is a bit ridiculous the historic commission has denied such gorgeous improvements to homes built within the last 6 years which are obviously not historic. Please feel free to contact myself or my husband at this email or the phone numbers listed below.

Best regards,  
Lauren Worthey

Phil Worthey

From: Joel Pape  
Sent: Monday, April 19, 2021 9:52 PM  
To: Historical Commission <historicalcommission@nashville.gov>  
Subject: 1408B Boscobel Street

To whom it may concern:

It has come to my understanding that a recent deck addition on a neighbors home is being contested at 1408B Boscobel Street. My home (1415 Shelby Ave) is directly behind the 1408B Boscobel Street property. I initially had concerns when I learned of the plans. Since the completion, it has been very well received by myself and the neighborhood. The new owners have taken a property that was showing the signs of wear and given it the maintenance it deserves. The deck is visually very nice and created a great outdoor living space where the previous appeared as an afterthought. They have done an amazing job with the design and has been decorated in a way that has really enhanced the visual appeal of the the alleyway/backyards.

If you should have any questions please don't hesitate to contact me.

Sincerely,  
Joel Pape

From: Kennedy, Nicki  
Sent: Monday, April 19, 2021 9:19 PM  
To: Historical Commission <historicalcommission@nashville.gov>  
Subject: Re:1408B Boscobel

Good afternoon,

I am writing on behalf of myself and my husband Phil Kennedy. We own a house at 1419 Shelby Ave that backs into the lane behind 1408 Boscobel.

Our neighbours, James Dunn and Windel Morgan, owners of 1408B Boscobel, built a deck recently and we think it is a fantastic addition to our little community. We all look into the lane and it is a big part of our socialization.

The deck is beautifully appointed, has lovely trees on the top which are already blooming and has made the back lane very appealing and a pleasure to look at from our deck opposite.

We think the deck provides a lovely perspective and we are extremely pleased to have it as our view from our decks! It certainly improves the look of our community.

With respect,

Nicki and Phil Kennedy  
1419 Shelby Ave

**From:** Cindy Koziarz  
**Sent:** Monday, April 19, 2021 5:33 PM  
**To:** Historical Commission <historicalcommission@nashville.gov>  
**Subject:** 1408B Boscobel Street

Hello,

I live behind James Dunn and Windle Morgan and can see their deck from my house. I think it is a lovely addition to our backyard neighborhood. It is pleasing to look at and is tastefully well done, as in keeping with the rest of their beautiful home. My husband and I would be heartbroken to see it changed in any way as it is perfect in it's design and build.

Regards,

Cindy and Paul Koziarz  
1425 Shelby Ave.

Neighbor comments  
received 5/3/2021

We are asking that the MHZC Commission stay consistent with previous rulings and deny the application for variance from the 20' setback rule at 1408B Boscobel Street. Before I get into a few details of why we do not think a variance should be allowed, I would like to provide a timeline for some perspective.

November 5<sup>th</sup> 2020 The contractor begins to tear out the old existing door level deck.

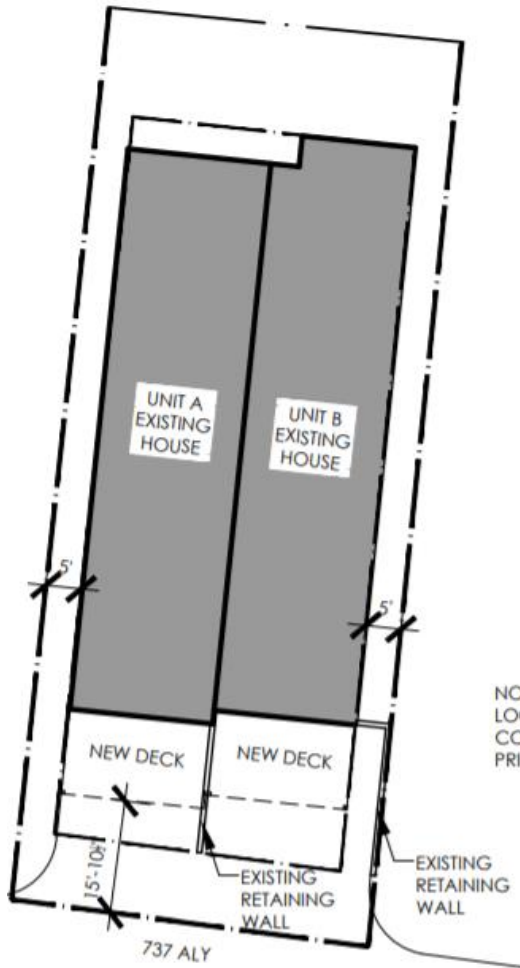
November 30<sup>th</sup> 2020 the second level of the deck is under construction. I make the Historical Commission aware since the home owner told me that the contractor told them he never applies for permits and works it out with Codes later. The contractor also said that if they had to tear down the deck because he couldn't get the setback to change that he would not charge them for the deck. This says to me that the contractor knew what the rules are but decided to go for the "ask for forgiveness" rather than asking for permission.

December 3<sup>rd</sup> 2020 I inquired as to whether a permit was applied for since the deck was complete. I was told by the Historical Commission that a permit was not applied for and an inspector would be sent out.

February 3<sup>rd</sup> 2021 we were informed that the violation process had been started since the deck did not comply with the 20' setback.

A few other comments and examples:





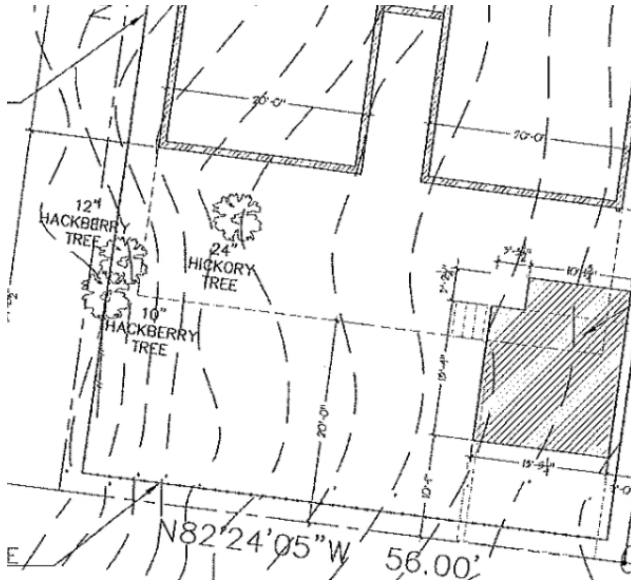
This was part of a recent application for a permit at 1406A Boscobel Street to extend their existing deck, after it received damage, 5' into the 20' setback. The application was denied.

NOTE: PROPERTY LOCATION BASED ON COUNTY GIS. CHECK PRIOR TO CONSTRUCTION.



This is a snippet of the application for our carport at 1408A Boscobel Street. It shows a setback of 10'-1" from the property line. Since this is a free standing building it does not have the same 20' setback that the attached deck at 1408B Boscobel requires.

The lower diagram shows a closer view of the area between the lot line and the carport. The diagram also show what the 20' setback line would be.



The left diagram shows a closer view of the area from the property line to our carport. The diagram also shows where the 20' setback line would be. The arrow in the picture above shows approximately where the 20' setback would be in relationship to the deck.



Here you can see the second level of the deck which is not anywhere close to door level. My understanding is that a second level deck with a usable space underneath requires a permit application and review. This deck is what sits in the setback area.

So in summation we the owners of 1408A Boscobel Street are asking that you reject this application for a variance from the setback. This second level deck was constructed without a permit or review and sits well into the 20' setback area. We were never asked to sign or approve any part of this project. When they mentioned they were going to build, we discussed the need for a permit which they acknowledged, but as I stated before their contractor said it was not necessary. By ruling against this variance, you would be consistent with other rulings (1406A Boscobel) and would make sure that others would know that they cannot just build something and ask for forgiveness later. We are just asking that they follow the rules and process.

# Applicant Comment: 1408B Boscobel St.

Submitted by James Dunn, owner of the property.

## Introduction and Requested Decision

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The MHZC staff recommendation to disapprove our deck and require its removal seems overly harsh given the circumstances and considerations I've outlined in this document. I disagree with the staff's contention that the deck extends 10' into the 20' setback. **It's apparent that the rear setback was measured from the edge of my parking pad whereas, setbacks for three other MHZC-approved structures, which I've highlighted in this document, were measured from the center of the ally.** When measured consistently with those structures, our deck intrudes only 24" into the setback.

If the Commission finds the deck cannot be fully approved in its current configuration, **we ask the Commission to "approve it with conditions"** that it be shortened by 24".

### Outline / Key Points of Applicant's Request

- [Timeline and events that influenced our decision-making to date.](#)
- [20' setback is measured incorrectly or inconsistently from prior MHZC decisions.](#)
- [August 2020 MHZC decision regarding 1406 Boscobel request was expedited – lacks final determination from the Zoning Examiner whether 20' setback applies to decks.](#)
- [Three MHZC-approved structures already exist within the back setback area on our block.](#)
- [Our deck reflects the dimensions and setbacks of neighboring, MHZC-approved structures.](#)
- [Consider the intent of MHZC Codes against the as-built reality of our current ally.](#)
- [MHZC considered 25' shorter lot to accommodate approval of the 1410 Boscobel DADU.](#)
- [Our deck makes a positive impact on our back-facing neighborhood.](#)
- [Petition from neighbors supporting approval of deck as completed.](#)

## Timeline and significant events that influenced our decision-making through this process.

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While not directly relevant to the Commission's decision, I feel it's important for you to understand the context for our decisions through this process. For clarity, the project under review by MHZC began after we were well underway with two other home improvement projects. In early October 2020, we hired Brandon McBee's company, MAC & Company, to 1) repair poorly finished seams and repaint the exterior of our home and 2) to replace the existing rear deck, which had been poorly maintained by the prior owner. These projects do not involve the MHZC. Brandon was referred to us by our realtor, and we hired him to do some internal renovations when we purchased our home in May 2019.

### Why we began construction ahead of permitting.

In early December 2020, we asked Brandon to build a desk extension over our lower parking pad and to manage everything involved including obtaining any necessary permitting. Brandon assured us he

was experienced navigating the permitting process and said decks typically don't fall under the purview of MHZC. He noted permitting was moving slower due to the volume of construction permits being requested and the virtual interactions now used to obtain permits rather than the face-to-face discussions with staff to which he is accustomed. Brandon was confident enough to suggest starting construction before all permitting was completed due to the scarcity and escalating cost for lumber.

**Significant life events that began in December required most of our attention.**

Nearly all work on the deck ceased just before Christmas, due to these events:

- Brandon's foreman for this and many MAC & Company projects was hospitalized with COVID at Christmas and remained on a ventilator until late-March. We understand he is on the mend; although, he will require considerable therapy before being well enough to return to work.
- We learned my mother had bone cancer just before Christmas. My husband and I traveled to Montana every other weekend to help my sister with Mom's hospice care. Mom passed away March 9, and I've been working to close out her estate since then.
- My husband, Windle Morgan, had a stroke on December 29. We are fortunate that it was a mild one and he was able to return to work in early February.
- We received MHZC's notice of violation for the deck on January 28, 2021. After discussing the situation with Brandon and learning of his unfamiliarity with the online permitting system:
  - I decided to assume responsibility for working with MHZC on a mutually agreeable solution for keeping the deck
  - I asked Brandon to subcontract to someone with greater familiarity with the online permitting system.
- Brandon is subcontracting to Ronald Lawson, general contractor license #71450, who initiated the permitting for this deck. He was instructed by permits department to acquire a Historic Permit. (See screen capture on the right showing where our permit stands in the process.)
- Assuming MHZC approves today's request, we will move forward with the remaining permit process.

**Disagreement on the back border for measuring the 20' setback.**

I'm confused by MHZC's contention that our deck extension intrudes 10' into the 20' setback because we built it in alignment with neighboring MHZC-approved structures. **If MHZC's measurements were right, I'd need to remove all but 5' of the deck extension.** Therefore, I measured the 20' setback myself based on two prior MHZC findings on neighboring properties. **It's evident MHZC staff used a different rear boundary for prior decisions.**



## 1406 Boscobel Street

The MHZC staff report for our project at 1408B Boscobel notes, “A similar request at 1406 Boscobel Street was denied in August 2020.” In that case, our neighbors filed an application to replace and expand the size of their second-floor decks to 12’ deep. MHZC rejected their request finding the expanded deck would extend into the rear setback. Since our neighbor at 1406A Boscobel had to replace their badly damaged deck, they extended it by 11” to the maximum depth possible without intruding into the setback.

- When measuring 20’ out from the furthest extent of the deck at 1406A Boscobel, the back property line used by MHZC staff appears to be the middle of the ally.
- Similarly, measuring 20’ from MHZC-approved garage at 1419 Shelby Avenue also comes to the middle of the ally.
- Measuring back from the middle of the ally on my lot, it appears only 24”-28” of our deck extension intrudes on the setback – not the 10’ indicated in the findings by MHZC staff.

As shown in the [project drawing of our deck in Figure 4](#), The rear wall of 1406 Boscobel is 6-8” closer to the ally than the outside edge of our replacement deck. Their decks are considerably larger than 5’ deep. Therefore, it’s reasonable to deduce our deck intrudes far less into the setback than indicated.

## The decision regarding 1406 Boscobel Street isn’t a strong precedent

In reviewing the MHZC staff recommendation on the 1406 Boscobel request, I note this:

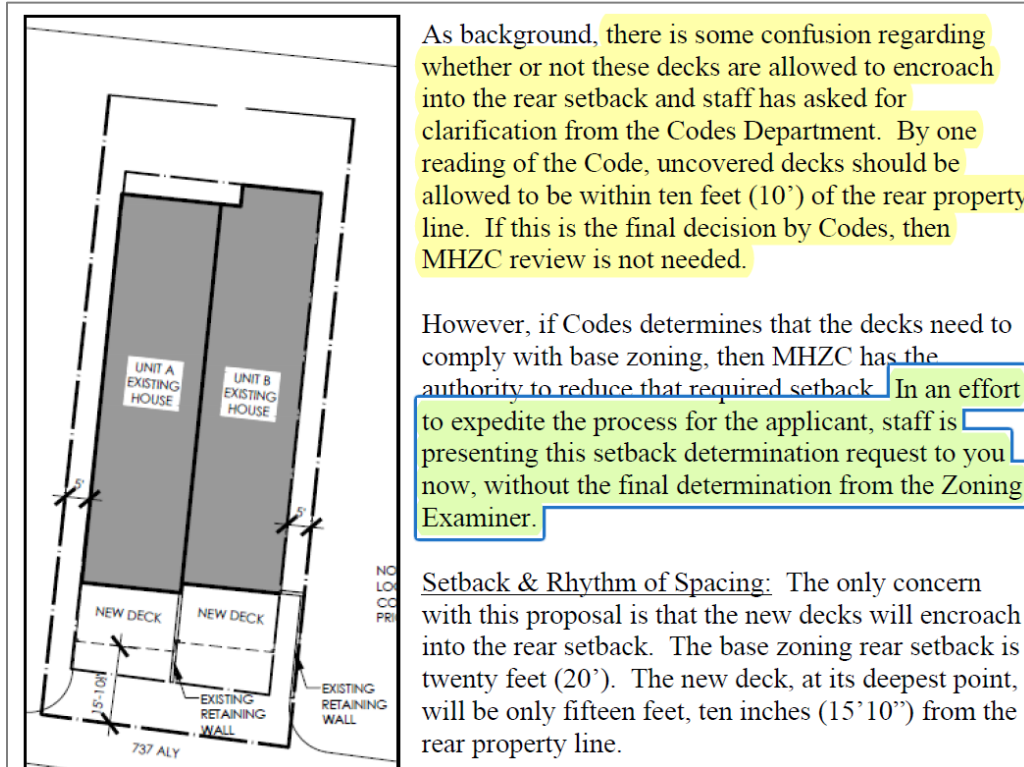


Figure 1 - Highlighted content from MHZC staff report 1406 Boscobel Street deck request

Given the uncertainty about the Codes noted regarding decks in the 20' setback as well as the updated guidelines being finalized by MHZC, we would like to exhaust the full review process — including obtaining a final determination from the Zoning Examiner — before agreeing to shorten my deck within 20' setback.

## MHZC-approved structures within the 20' setback on this block

Depending upon the position of the property line, three MHZC-approved structures on properties adjacent to our home are already constructed within or on the boundary of the 20' setback.

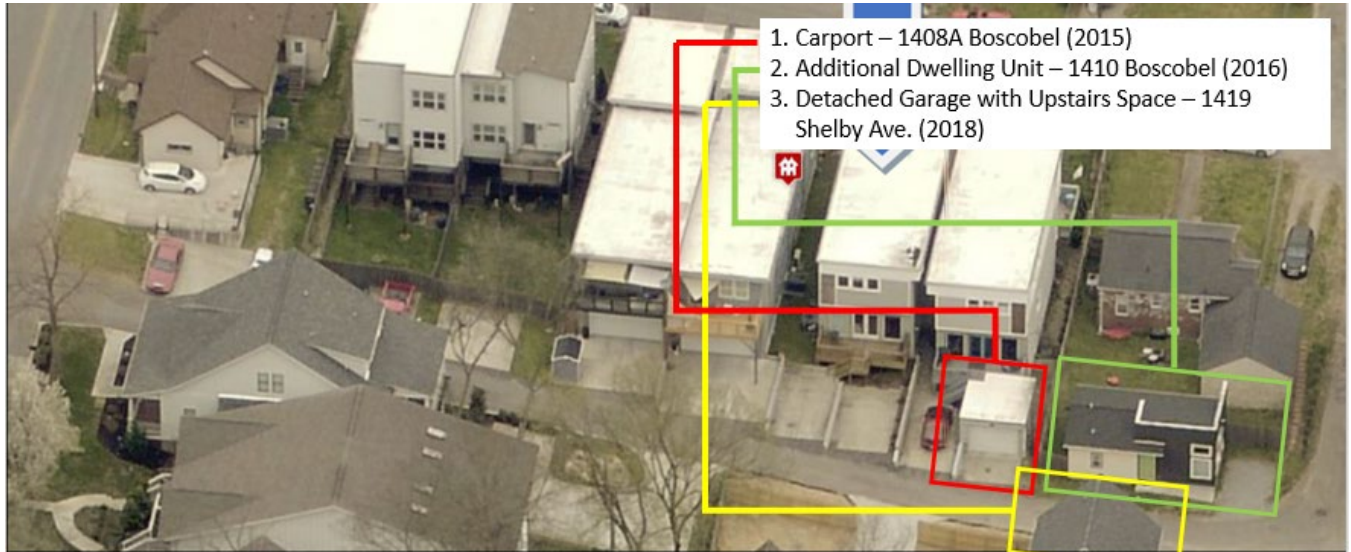


Figure 2 - Nearby MHZC-approved projects.

When designing our project, we specifically aligned our deck with the dimensions of the adjacent carport on 1408A Boscobel Street. As shown in the pictures below, we intended to have our deck align with the other structures on the ally.



Figure 3 - Deck Extension as viewed from both ends of ally.



## Our deck reflects dimensions and setbacks of neighboring structures

Shortly after moving in during June 2019, we began discussing ideas and options with our neighbors for creating a better “back yard” space. A prominent feature in our home is the great room that faces the back of our home. As purchased, the windows and doors at the back of the home led to a badly neglected deck and a view dominated by our two parking pads.

The plan for our deck projects, which is shown below, includes two parts:

- **Replacement Deck:** Prior to starting work on the “expanded deck” under review by MHZC, we engaged our contractor to replace the existing rear deck of our home because we considered it was unsafe. This gave us the opportunity to make better use of the existing footprint by shifting the steps to the left end of the deck.
- **Expanded Deck:** In considering our options, we believed building a deck over the lower parking pad based on the general dimensions of the carport next door made the most sense. Since the neighbor’s home is the other side of our duplex, the configurations of its parking and access points mirrored ours.

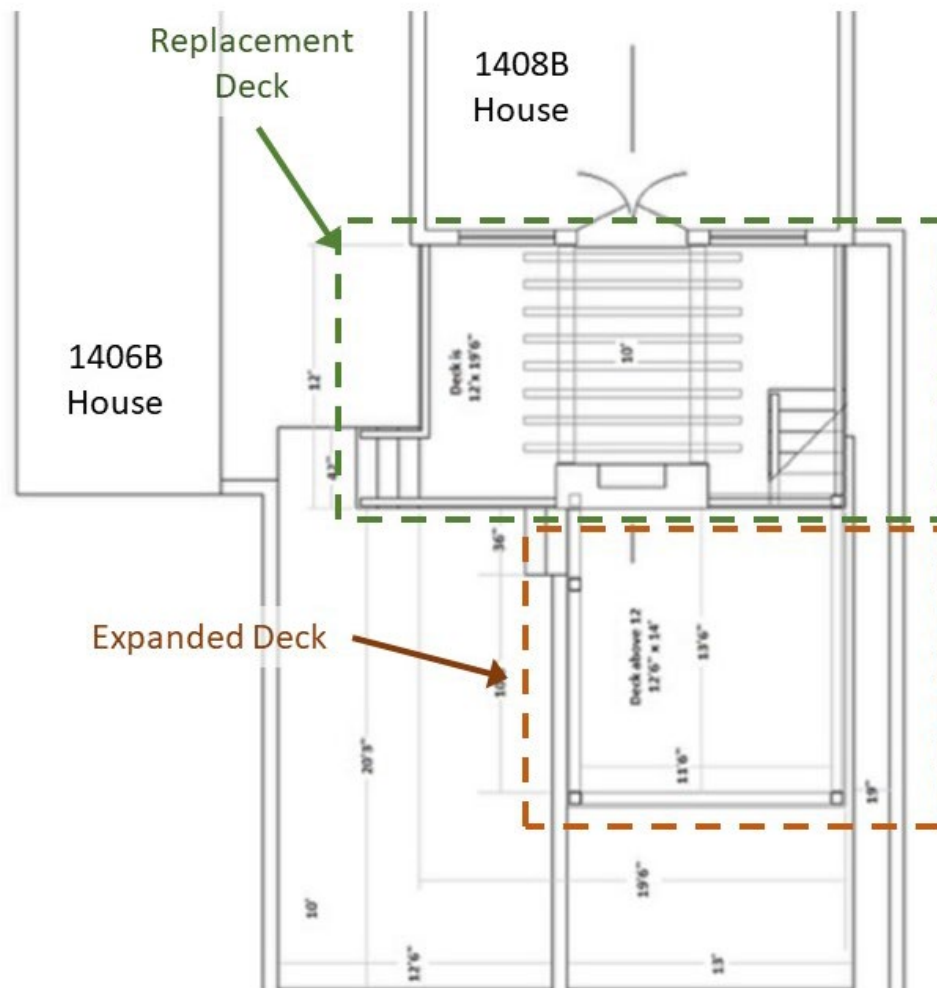


Figure 4 - Plan for Replacement Deck and Deck Extension

As shown on the photo below, the dimensions and setbacks of the deck extension are designed to be proportional with the adjacent, MHZC-approved structures that exist within the 20-foot setback. The photo is shot from our neighbor's second-level deck at 1406B.



## Consider the intent of MHZC codes against the reality of our current ally

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In reviewing the Neighborhood Conservation Zoning Design Guidelines as well as the draft Overlay Recommendations and Design Guidelines that were on the agenda for the Commission's March meeting, I'm struck by the Commission's efforts to clarify and update requirements to better reflect the changing use needs and expectations of today's families.

- On a block with considerably more historic homes, I expect the 20' setback would encompass backyards, with lawns, gardens, and possibly small outbuildings — outside spaces where families work, play and engage with their neighbors. Preserving these types of spaces is clearly beneficial to the neighborhood.
- As shown in the yellow box on the map below, the 20' rear setback between 1400 – 1410 Boscobel Street comprises driveways and parking pads for 15 cars. While this is an understandable outcome of tall-and-skinny infill homes and the requirement that parking spaces be placed at the back of lots, the resulting ally resembles a suburban street dominated by driveways and garage doors rather than the historic district in East Nashville.
- I respectfully suggest there is a “compelling reason” to *allow* decks such as the one we propose, or even the second-floor extended deck our neighbors previously requested to encroach into this 20' x ~200' island of concrete.
- Thoughtfully designed decks could soften the severity of our current ally landscape and encourage greater community interaction on our block. For blocks like ours with side-by-side tall-and-skinny homes, allowing homeowners to add outdoor spaces over rear parking pads could be a closer approximation or representation of the backyard spaces found in historic East Nashville neighborhoods.



## MHZC previously considered unique characteristics of block when approving the 1410 DADU

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In reviewing the 2016 MHZC staff recommendation to approve the DADU constructed on 1410 Boscobel Street, which located next door to our duplex, I note the following analysis and finding on pages 6 and 7:

“2. The design guidelines require twenty feet (20’) of separation between the principal building and the accessory building. The proposed outbuilding will be located twelve feet (12’) from the principal building. Staff finds this location appropriate because the lot at 1410 Boscobel is only one hundred, twenty-five feet (125’) deep, nearly twenty-five feet (25’) shallower than most lots in the surrounding area.”

Because lots on our side of the ally are considerably shallower than most lots in the surrounding area, and because the 20’ setback on our block comprises 15 side-by-side parking pads, I respectfully suggest that the deck we built – and similar structures built or potentially considered on our block – creates a “yard” space that better reflects the backyards that exist on most historic blocks in the area. **While perhaps not suitable for blocks with more contributing homes, might the solution I suggest better align with the *intent* of the 20’ setback for blocks like ours?**

## We meant to make a positive impact on our back-facing neighborhood

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One of the few positive aspects of COVID is that our neighbors sought out each other’s company – setting up lawn chairs and tables on our driveways in the evenings to talk with each other across the ally through spring, summer, and fall of 2020.

Almost from the day we moved into our home during the summer of 2019, we discussed our ideas for improving our home with our neighbors. Chief among our ideas was a deck based on the rough dimensions of our neighbor’s carport.

At no time did anyone raise objections or concerns, and the feedback we’ve received from neighbors and passersby since construction began has been overwhelmingly positive.



# Support for MHZC Approval of Permit

**Re: Rear Deck Project at 1408B Boscobel Street, Hearing on March 17, 2021**

The following neighbors of 1408B Boscobel Street encourage the Nashville Metropolitan Historic Zoning Commission to approve a permit for the rear deck currently under construction.

Address	Printed Name	Signature
1425 Shelby	Cindy Koziarz	Cindy Koziarz
1425 SHELBY	PAUL KOZIARZ	Paul Koziarz
1419 Shelby Ave	Nicki Kennedy	Nicki Kennedy
1419 Shelby Ave	Phil Kennedy	Phil Kennedy
1406B Boscobel	Joel Beres	Joel Beres
1408B S. 14th Street	Nate Funch	Nate Funch
1415 Shelby Ave	Joel Page	Joel Page
1406A Boscobel St.	Lawren Worthy	Lawren Worthy
1406A BOSCOBEL ST	PHILLIP WORTHY	Phillip Worthy
1421 Shelby Ave	Rayner Fredrick	Rayner Fredrick
1421 Shelby Ave	Heather Fredrick	Heather Fredrick