



**BEFORE THE BOARD OF ZONING ADJUSTMENT
OF THE DISTRICT OF COLUMBIA**



APPEAL

Before completing this form, please review the instructions on the reverse side.
Print or type all information unless otherwise indicated.

Pursuant to Section (s) §3100 and §3101 of the Zoning Regulations of the District of Columbia, an appeal is hereby taken

from the administrative decision of:

Name of administrative officer and title

The Zoning Administrator for the District of Columbia, DCRA

made on

Date of decision

3/16/09

, to the effect that Building permit B0902028 (3/16/09) and

amended permit B0905289 (4/30/09) to allow the addition of a 2nd story deck with stair to the ground
and of a separate 3rd story deck to a non-conforming structure devoted to a conforming use.

Address(es) of Affected Premises	Square(s)	Lot(s)	Zoning Districts
3046 N Street, NW	1209	0854 BOARD OF ZONING ADJUSTMENT District of Columbia	R-3
		CASE NO. <u>17971</u>	

Present use of Property:

Single Family Dwelling

EXHIBIT NO. 1

Proposed use of Property:

Single Family Dwelling

Owner of Property:

Micahel Rankin

Telephone No.:

202-333-1212

Address of Owner:

3046 N Street, NW, Washington, DC 20007

Name, address and telephone number of lessee:

N/A

Name, address and telephone number of appellant, if other than owner:

Georgina and Outerbridge Horsey

1249 31st Street, NW, Washington, DC 20007 Tel. 202-337-7334

State specifically manner in which appellant is aggrieved by the administrative decision, the allegations of error in the
administrative decision, and the relevant sections of the Zoning Regulations (see reverse for more detailed explanation).

Please use a separate piece of 8 1/2" x 11" to respond and attach it to the Form 125 Appeal.

I/We certify that the above information is true and correct to the best of my/our knowledge, information and belief. Any person(s) using a
fictitious name or address and/or knowingly making any false statement on this application/petition is in violation of D.C. Law and subject
to a fine of not more than \$1,000 or 180 days imprisonment or both.
(D.C. Official Code § 22-2405)

Date:

May 15, 2009

Signature:

Georgina Horsey Appellant

* If appeal is filed by agent of the Appellant, Form 125 Appeal shall be accompanied by a letter signed by the appellant authorizing the
agent to act on his behalf in this appeal.

To be notified of hearing and decision (Appellant or Authorized Agent*):

Name:

Outerbridge Horsey

Address:

1228 1/2 31st Street, NW, Washington, DC 20007

Phone No.:

202-337-7334

Fax No.:

202-337-7331

E-Mail:

oh@outerbridgehorsey.c

Board of Zoning Adjustment
District of Columbia
CASE NO. 17971
EXHIBIT NO. 1

Attachment to Form 125

2009 JUN 15 PM 2:16

State specifically manner in which the appellant is aggrieved by the administrative decisions, the allegations of error in the administrative decision and the relevant sections of the Zoning Regulations

The Appellants

The appellants are Outerbridge Horsey and Georgina Owen, owners since 1987 of the property at 1249 31st Street, directly to the south of the subject property. The garden of 1249 31st Street abuts the rear yard of the subject property (please see Attachments No. 2, 3 and 4). We take exception to the Zoning Administrator's approval of the Building permit No. B0902028 for the exterior work project at 3046 N Street and his subsequent approval of the amended permit B0905289 for the same project.

This exterior work consists of two separate projects at the rear of the property:

- 1, A deck (4ft. x 20 ft. approx.) at the second story (main entry floor) with a stair leading to the ground level
2. A deck (10 ft x 20 ft. approx) at the third story level.

We object to the granting of the building permit for each of these two decks and believe that neither of these decks is permitted by with Zoning Regulations s matter of right. Prior to explaining why the permit was issued in error and how we intend to prove our case there are certain aspects of the subject property that need to be presented by way of background that also affect the application of relevant sections of DCMR 11 Zoning Regulations

Both of the approved decks add significant, useable, outdoor space to two levels of the property and thereby increase the intensity of use of the subject property and adding to the density, height and bulk of the subject property and will have substantial adverse impact of the privacy and quiet enjoyment of the garden at 1249 31st Street.

Factual Background

The structures at 3046 N Street and 1249 31st Street were built prior to 1958 when the DC Regulations were enacted. The existing building at 3046 N Street is more than twice the height of the house at 1249 31st Street, as shown in the enclosed photograph and site section drawing (please see Attachments No. 5 and 6).

In terms of understanding the extremely high level of density (and minimum amount of light, air and privacy) that already exists in this area, it is important to note the existing structure at 3046 N Street exceeds the allowable density of the DC regulations and is **nonconforming in three ways that affect our property:**

1. Lot coverage: 70 % where 60% is allowed (DCMR 11, Sect. 403.2)
2. Rear yard: 18' - 9" where 20' - 0" is required (DCMR 11, Sect. 404.1)
3. Max. Height - 4 stories where 3 stories are allowed (DCMR 11, Sect. 400.1)

Subsequent to appellant's initial complaint to the Zoning Administrator, a Stop Work order was issued on and the project was review by the ZA. The second story deck was reduced in size by about 30% and the original building was amended. Appellant believe that even with this reduction in size, the amended permit does not correct the errors cited below. This appeal is to cover both the original permit and the amended permit.

The Zoning Administrator's Errors

1. With respect to BOTH the second story (main floor) deck and stair and the third story deck:

DCMR 11 Section 2001 pertains to **NONCONFORMING STRUCTURES DEVOTED TO CONFORMING USE.**

Section 2001.3: Enlargements or additions may be made to the structure, provided:

(a) The structure shall conform to percentage of Lot occupancy requirements

(b) the addition or enlargement itself shall

(1) Conform to use and structure requirements; and

(2) Neither increase or extend any existing, non-conforming aspect of the structure; nor create any new nonconformity of structure and addition combined.

The word addition is not defined in the DCMR 11. Section 199.2 (g) states "Words not defined in this section shall have the meanings given in Webster Unabridged Dictionary." In the Webster Unabridged Dictionary the word "addition" is defined as follows (see full definition Attachment No. 1):

1 a : the result of adding : anything added

1 b : something added that improves or increases value

2 : the act or process of adding : the joining or uniting of one thing to another

5 a : a part added to or joined with a building to increase available space

Both deck additions, which are detailed the permit drawings with structural elements and structural connections fit all of these definitions of an "addition." Further reinforcing this definition is the fact that both decks also fit the definition of the word "structure" which is defined in DCMR 11 as follows:

Structure – anything constructed, including a building, the use of which requires permanent location on the ground, or anything attached to something having a permanent location of the ground and including, among other things, radio or television towers, reviewing stands, platforms, flag poles, tanks, bins, gas holders, bridges, and retaining walls. The terms structure shall not include mechanical equipment but shall include structures for mechanical equipment.

Error No. 1 : The existing structure is non-conforming with respect to percentage lot occupancy. Per Section 2001.3 (a), no addition may be made to such a structure as a matter-of-right.

Error No. 2: The third story deck addition also increases the nonconforming aspect of the structure as extends to within 19 ft. approx of the rear property line thus exceeding the 60% lot occupancy limit by 10% (or 6 ft) . Per Section 2001.2 (b)(2) an addition “shall neither increase or extend any existing, non-conforming aspect of the structure.”

2. With respect to the second story (main floor) deck and stair

DCMR 11 Section 2503 pertains to STRUCTURES IN REQUIRED OPEN SPACES

Section 2503.4: Stairs leading to the ground from a door located on the story in which the principal entrance of a building is located may occupy any yard required under the provisions of this title. The stairs shall include any railing required by the provisions of the DC Building Code.

Error No. 3 : The zoning administrator states that 11 DCMR Section 2503.4 permits this structure, which with its oversize landing is essentially a deck that occupies a significant portion of the non-conforming rear yard. However, this section only permits the stairway and the handrail. While the handrail as component of a stair, is specifically referenced, a landing, which is a distinct building element, is not allowed. Thus the landing may not occupy any yard required by this title especially, a nonconforming rear yard, as is the case with this property, without a variance.

It is the position of the appellant that Section 2503.4 is worded in such a specific way and purposefully excludes the word landing to prevent applicants from abusing the intent of the zoning regulations and making landing into a platform or deck and much larger than the minimal size required to serve a stair.

Finally, because the existing rear yard does not meet the dimensions of the required rear yard (per DCMR 11, Sect. 404.1), it therefore does not meet the definition of “any yard required under the provisions of this title” and thus Section 2503.4 may be applied in this case.

How Appellants Intend to prove Their case

Appellants intend to offer factual testimony, plans, and related documents, as well as legal argument, to make their case.

Additionally the documents submitted for the original permit by the Owner’s agent were incomplete and lacking crucial zoning data. Further information will be provided at a later date on this matter also.

End of Document