

DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

EDWARD V. HANLON

Appellant

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No.: 18429

Hearing Date: October 30, 2012

**APPELLANT'S SUPPLEMENTAL STATEMENT
IN RESPONSE
TO THE DISTRICT OF COLUMBIA'S
PREHEARING STATEMENT**

Comes Now the Appellant, Edward V. Hanlon, and files this SUPPLEMENTAL Statement in Response to The District of Columbia's Prehearing Statement in the above captioned matter and states as follows:

I. The Height of the Roof Deck Clearly Violates 11 DCMR §400.1

The District of Columbia in its Prehearing Statement asserts:

Appellant alleges, without providing any supporting evidence, that the third story roof deck violates the applicable height limit. See Appeal dated 6/9/12 at p. 3. This allegation is baseless as the plans show that the roof deck will be within the 40 ft. height limit set forth in 11 DCMR §400.1. **Page A-4 of the plans shows the top of the highest element of the roof deck will be approximately 39 ft. 6 in. See Exhibit C. (Emphasis added)**

However, Exhibit C, page 4 is the wrong diagram to look at. Exhibit C, page 4, does not give the height from the ground to the roof line¹. Exhibit C, page 4, gives the height from the surface of the first floor to the roof line. The level of the first floor is denoted **0' 0"** in Exhibit C, page 4. District of Columbia's Exhibit C, page 4 gives the distance from the

¹ 11 DCMR §199.1 DEFINITIONS states "**Building, height of** - the vertical distance measured from the level of the curb opposite the middle of the front of the building ...

surface of the first floor to the roof line as **31** feet and the distance from the surface of the first floor to the level of the deck floor as 34 feet. *See* District of Columbia Exhibit C at page 4 (In Exhibit C, page 4 the height of the first and second floors is given as 11 feet *each* and the height of the third floor as 9 feet for a total of 31 feet)

The same District of Columbia's Exhibit C the *very last page, page 7*, contains a diagram notated as "Building Elevation: North" and Building Elevation: South" represented to be drawn to scale with the notation: *SCALE: 1/4" = 1'-0"* . This is a reduced copy of the actual 3 foot by 4 foot architectural diagram filed with the permit application. Reviewing the **actual** 3 foot by 4 foot original diagram and measuring using the scale notated at the bottom of the diagram gives the height of the roof line as slightly over 33 feet, the parapet at 34 feet, the top of the front wall of the deck at exactly 40 feet, the height of the "Decorative Wall" closest to the front of the building as 42.5 feet and the height of the second "Decorative Wall" as 41 feet. Thus, **using the District of Columbia's own exhibit** it can be seen that "the top of the highest element of the roof deck" is at least 42.5 feet not 39.5 feet as claimed in the District of Columbia's Pre-Hearing Statement.

But, in fact the roof line is at least 34 feet 4 inches high when measured from the "curb opposite the middle of the front of the building" ¹¹ DCMR §199.1

Accepting that the distance from the first floor to the roof line is 31 feet as given in District of Columbia Exhibit C at page 4, the picture of the front of 1530 Swann Street NW submitted by the Applicant during the permit application process (*see* Appellant Exhibit No. 23) shows 3 and one half front steps up from the sidewalk to the front landing and then there

is a fourth step up to enter the first floor. Each riser is 7” each tread is 1” and, therefore, the level of the first floor is 36” above the sidewalk immediately in front of the steps. The Appellant confirmed these measurements by actually physically measuring the height of the steps with a tape measure and also got the same height of 36 inches from the level of the sidewalk immediately in front of the steps to the level on the first floor. The roof line is, therefore, 34 feet in height above the level of the sidewalk immediately in front of the steps.

The sidewalk slopes toward the curb from the front steps. *See* Exhibit No. 27. The sidewalk immediately in front of the steps is 4” higher than the curb, as can be seen in Exhibit No. 27, which shows a 2x4 turned on its side and a bubble level instrument, with the bubble centered, used to measure how much lower the curb is from the sidewalk immediately in front of the front steps. The lower height of the curb is obvious from Exhibit No. 27. Measured from the curb then, the roof line is 34’ 4”. This makes the front wall of the deck 41’ 4”, the “Decorative Wall” closest to the front of the building as 43’ 10” and the second “Decorative Wall” as 42’ 4”.

This deck violates 11 DCMR §400.1

II. The Courts On The Property Are Not Compliant With 11 DCMR §406.1

Contrary to the assertions in the District of Columbia’s Pre-Hearing Statement the Courts on the lot are not compliant with 11 DCMR §406.1. 11 DCMR §406.1 states with respect to a flat in an R-4 zone:

“Where a court is provided in a Residence District, the court shall have the minimum dimensions set forth in the following table:

MINIMUM WIDTH OF OPEN COURT

4 in. per foot of height of court, but not less than 10 ft”

A. The East Side Rear Court Is Being Reduced From 4’6” To Less Than 10”

In 2004 the prior owners of 1530 Swann Street NW filed for a Special Exception to build a **first floor** ‘powder room’ in the then existing East Side Rear Court. A Public Hearing was held on this request for Special Exception on March 18, 2003. At the hearing it was represented to the Board of Zoning Adjustment that the East Side Rear Court was 4’6” wide. *See* Exhibit No. 25: Transcript of March 18, 2003 Public Hearing of the Board of Zoning Adjustment at pages 11-12.

A careful review of District of Columbia Exhibit C, page 1, which is also Appellant Exhibit No. 1, shows that the lot is 17 feet wide. Appellant Exhibit No. 26 shows that according to the architectural diagrams submitted with the original permit application, B1206336, issued April 10, 2012, the width of the structure when construction is completed would be 15.7 feet, **reducing the East Side Rear Court to 1.3 feet in width (17 feet – 15.7 feet).** *See* Exhibit Nos. 24 and 26

Reducing this side court from 4.5 feet to 1.3 feet violates 11 DCMR §406.1. The East Side Rear Court was already non-conforming as to width before Permit Application B1206336 was issued. *See* Exhibit No. 24 (The minimum width under 11 DCMR §406.1 is 10 feet, as the District of Columbia Pre-Hearing Statement correctly points out.) However, pursuant to Permit Application B1206336, the non-conformity of the East Side Rear Court is being increased, because its width is being reduced from 4.5 feet to 1.3 feet pursuant to Permit Application B1206336. *See*

Exhibit No. 26

Permit B1209691 issued June 5, 2012 was a revision of the earlier permit (B1206336) solely for the purpose of moving the stairway to be built over the East Side Rear Court a maximum of **6 inches** further to the east. See Appellant's Exhibit No. 28

As a result of the second permit, B1209691, the width of the structure became a maximum of 15.7 feet + .5 feet = 16.2 feet. The lot is 17.0 feet wide. The result is:

$$\underline{17.0' \text{ (lot width)} - 16.2' \text{ (width of structure in the rear)} = 0.8' \text{ (width of resulting Open Court)}}$$

The East Side Rear Court is not being eliminated as the District of Columbia argues in its Pre-Hearing Statement; rather, it is being reduced from 4.5 feet to 0.8 feet, which is about 9.6 inches. The District of Columbia in its Pre-Hearing Statement wrote the following:

“The zoning standards relating to courts are found under 11 DCMR § 406. A court is not required in any zone district; however, that section states that **where a court is provided**, it must meet certain minimum dimension requirements. See 11 DCMR § 406.1. In this case, since the Property is a flat in an R-4 zone, **an open court must be a minimum of 10 feet wide**.” (Emphasis added) District of Columbia Pre-Hearing Statement, page 3.

The East Side Rear Court was a non-conforming open court of 4.5 feet in width prior to the issuance of the two permits at issue in this Appeal. The non-conformity with respect to the width of the East Side Rear Court is being increased substantially by reducing the width of the Open Court to less than 10 inches, violating 11 DCMR § 406.1.

11 DCMR §2001.3 states:

“Enlargements or additions may be made to the structure; provided:

- (a) The structure shall conform to percentage of lot occupancy requirements, except as provided in § 2001.13; and
- (b) The addition or enlargement itself shall:
 - (1) Conform to use and structure requirements; and
 - (2) **Neither increase or extend any existing, nonconforming aspect of the structure;** nor create any new nonconformity of structure and addition combined.” (Emphasis added)

In this case *if* “[T]he structure “conform[ed] to percentage of lot occupancy requirements” then the issuance of both permits at issue in this Appeal violated 11 DCMR §2001.3 by significantly increasing the non-conformity of the East Side Rear Court. In this case extending the deck structure over the East Side Rear Court increases substantially the non-conforming aspect of East Side Rear Court with respect to court width in violation of 11 DCMR §2001.3(b)(2).

However, not only can Applicant *not* benefit from 11 DCMR §2001.3, Applicant is in violation of 11 DCMR §2001.3, because Applicant has made “Enlargements or additions” where the building area of the lot already exceeds 60 percent².

In fact the building area exceeds 70 percent, as was explained very carefully in Appellant’s

2 11 DCMR §403.2 “No structure, including its accessory building, shall occupy its lot in excess of the percentage of lot occupancy set forth in the following table ... |

ONE DISTRICT AND STRUCTURE		MAXIMUM PERCENTAGE OF LOT OCCUPANCY
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R-4 Row dwelling, flat,
church, or public school

60%

Supplemental Prehearing Statement filed on IZIS on October 16, 2012. In addition District of Columbia Exhibit C, page 1, (which is also Appellant Exhibit No. 1), shows the lot to be exactly 17 feet wide and 68 feet long. The total lot area is 1156 square feet.

District of Columbia Exhibit C, page 1, (which is also Appellant Exhibit No. 1) also shows the building which occupies the lot to be 46.9 feet long and 17 feet wide for a total square footage of **797.3 square feet**. See District of Columbia Exhibit C, page 1; or, see Appellant Exhibit No. 1

Appellant Exhibit No. 15, shows the areaway in the rear of the house which contains seven (7) stairs leading to a below grade basement door. The areaway has 36'' wide steps. The minimum tread depth under the applicable Building Code is 11''. The minimum width and length of an exterior landing is 36'' in each direction under the applicable Building Code. The dimensions of this areaway cannot be less than **28 square feet** under the applicable Building Code. This is consistent with Appellant Exhibit No. 15, which is a picture of the areaway.

The lot occupancy is, therefore, at least $797.3 + 28.25 = \mathbf{825.55}$ square feet. The lot occupancy rate is at least **71.4** percent.

This areaway counts towards lot occupancy. The District of Columbia in its Pre-Hearing Statement takes the position that this existing areaway does not count towards lot occupancy:

“[A] stairwell that provides access to a below grade cellar is not considered building area and thus does not contribute to lot occupancy. See 11 DCMR § 199.1 (definitions of “building area” and “percentage of lot occupancy”) See District of Columbia’s Pre-Hearing Statement at page 3

First, the definition of an areaway is as follows: an “areaway – [is] an opening to the ground below-grade” *See e.g.* BZA Order dated in Appeal No. 17631 of *Advisory Neighborhood Commission 3E and Todd Boley*, dated July 31, 2007 at page 4. In this instant Appeal the areaway in the rear yard of 1530 Swann Street NW has a below-grade stairway built into the foundation of the structure providing access to the basement. District of Columbia is correct in its Pre-Hearing Statement that this stairway does not cause an encroachment on the required rear yard, because pursuant to 11 DCMR § 2503.2 of the Zoning Regulations, “[a] structure, not including a building, no part of which is more than four feet (4 ft.) above the grade at any point, may occupy any yard required under” this Title. The basement stairway is a structure, but is located entirely below grade, no part of which is more than four feet above grade, therefore, pursuant to § 2503.2, the District of Columbia is correct that this stairway is permissible in the rear yard of 1530 Swann Street NW and does not diminish the width or length of the rear yard.

However, the District of Columbia in its Pre-Hearing Statement mixes apples and oranges.

The basement stairway in and of itself is permitted in the rear yard because the stairway is not constructed so high as to violate the 4 foot height limitation contained 11 DCMR § 2503.2.

However, an areaway is just a court, whether an open court or a closed court; an areaway is just a special form of a court. **This areaway is just a simple open court.**

Similarly, an areaway may be either a conforming areaway or a non-conforming areaway,

just as an open court may be a conforming open court or a non-conforming open court. *See e.g.*

Order dated January 13, 1969 in *Appeal No. 9685 S. Tebbs Chichester, Jr.*³

With respect to 1530 Swann Street NW a conforming open court on this lot has to be at least 10 feet wide pursuant to 11 DCMR § 406.1, as the District of Columbia rightly pointed out in its Pre-Hearing Statement at page 3. The areaway in this case is, therefore, a non-conforming open court.

Thus, the areaway in this case is just a non-conforming open court 3 feet wide. 11 DCMR §199.1 DEFINITIONS states:

“Building area - the maximum horizontal projected area of a building and its accessory buildings. **The term "building area" shall include all side yards and open courts less than five feet (5 ft.) in width ...**” (“Emphasis added) 11 DCMR §199.1

Thus, though the basement stairway does not encroach on the rear yard requirement, the **areaway, being less than 5 feet wide, does count in calculating lot occupancy.** *See e.g.* discussion by Chairperson Geoffrey H. Griffis at the May 10, 2005 Public Hearing of the Board of Zoning Adjustment:

CHAIRPERSON GRIFFIS: So the direct question to the applicant is how did you calculate the lot occupancy? Did you include that areaway in the lot occupancy or not?
...

CHAIRPERSON GRIFFIS: Secondly, as Mr. Hildebrand is bringing up, **it should have been calculated in, the less than 5 foot areaway, in the lot occupancy.** (Emphasis added)

3 (“[A] variance from the lot occupancy, rear yard, open court [is sought]... There is an areaway rendered nonconforming as the result of the construction of a new structure adjacent to the premises enclosing subject property on its third side. It is requested that the areaway be reduced from a 10 foot by 350 foot area to 5 foot 75 foot area.”) (Emphasis added) See Order dated January 13, 1969 in *Appeal No. 9685 S. Tebbs Chichester, Jr.*

CHAIRPERSON GRIFFIS: Okay. I think we need to proceed. The calculations, from what you just stated, did not take into account the areaway and, therefore, we would have to add that back in [to the calculation of lot occupancy]...” (Emphasis added)

See Transcript at pages 74- 78 May 10, 2005 Public Hearing of the Board of Zoning Adjustment, Application No. 17319, William McKeever

See also, a similar discussion by Chairperson Geoffrey H. Griffis which took place at the April 8, 2003 Public Hearing of the Board of Zoning Adjustment, *Application No. 17003, Edward Robinson*:

CHAIRMAN GRIFFIS: **So these calculations count the small areaway?**

MR. ROBINSON: I believe they do. I am not 100 percent sure on that. You mean, the passageway that belongs right here?

CHAIRMAN GRIFFIS: That's correct.

...

CHAIRMAN GRIFFIS: Yes. Your area[way] was about 3.58 feet as it is showing on the plat.

MR. ROBINSON: Yes.

CHAIRMAN GRIFFIS: **That would count towards lot occupancy.**

...

CHAIRMAN GRIFFIS: [D]o you use that small areaway, the 3.5 feet?

MR. ROBINSON: This walkway?

CHAIRMAN GRIFFIS: That's correct.” (Emphasis added)

See Transcript at pages 29-33 April 8, 2003 Public Hearing of the Board of Zoning Adjustment, Application No. 17003, Edward Robinson

For all the reasons given above the square footage of the areaway *must* be included in the lot occupancy calculation.

Accordingly, the lot occupancy is at least (797.3 sq ft building foot print + 28.25 sq ft areaway) = 825.55 square feet. The lot occupancy rate is, therefore, at least **71.4 percent**. The Applicant, even if he were to ask for relief under 11 DCMR §223 for some part of the work covered by the two permit applications at issue in this Appeal, would not be entitled to such relief under 11 DCMR §2001.3 and 11 DCMR §223.

B. The Second Floor Roof Structure Is No Longer Compliant

As discussed above and as correctly described in the District of Columbia's Pre-Hearing Statement "The third story of the dwelling is a partial story that provides access at the rear of the Property to an existing roof deck located on the roof of the second story." District of Columbia's Pre-Hearing Statement at page 1. This second story walk-out roof deck, pre-existed the issuance of the two building permits at issue in this Appeal. The entrance onto the second story roof deck was from the third floor hallway, walking out onto a deck on top of the second floor roof.

This pre-existing second story roof deck sat in an open court. ("Pre-existing Second Story Open Court"). This open court was 12.7 feet wide and 8.9 feet long. *See* District of Columbia's Exhibit C at page 1, which is also Appellant Exhibit No. 1. The pre-existing open court is labeled "Existing Roof Deck" in District of Columbia's Exhibit C at page 1. Appellant Exhibit No. 3 has a picture of this deck in the open court. The open court ran along the property line with 1532 Swann

Street NW; and, the wall of the third story of Applicant's dwelling formed one of the other sides of this Open Court.

Pursuant to the two permits at issue in this Appeal, Applicant has fundamentally altered the Pre-existing Second Story Open Court. At the rear of the Pre-existing Second Story Open Court facing the rear Public Alley the Applicant removed the 36" safety rail seen in Appellant Exhibit No. 3 and replaced the safety rail with a **4 foot high double sided wall** on the rear of the deck, as shown in Appellant's Exhibit No. 11 (in the picture this wall comes up to Applicant's chest). Applicant also replaced the safety railing which ran alongside the property line with 1532 Swann Street NW with a wall varying in height between 9 feet and 17 feet high; this can also be seen Appellant's Exhibit No. 11.

The result was to **form a new non-conforming closed court.** The new non-conforming closed court is bordered on the west side by the 1532/1530 Swann Street property line with its huge wall, on the east side by the new stairway structure to the third floor roof, on the south side by the new 4 foot high wall and on the north side by the exterior wall of the third floor of the dwelling. The dimensions of this new closed court are $8.9' \times 9.7' = 86.33$ square feet. *See* District of Columbia's Exhibit C at page 1

This new non-conforming closed court **violates 11 DCMR § 406.1** which states with respect to closed courts applicable to this dwelling that minimum width and area must be:

“Width: 4 in. per foot of height of court, but *not less 15 ft.*

Area: Twice the square of the required width of court dimension based on the height of court, but *not less than 350 ft.*

(Emphasis added) 11 DCMR § 406.1

If the Applicant tried to take the position that somehow at least the area still open to the sky from the original Pre-existing Second Story Open Court, remained an open court, not a closed court, because the stairwell to the third floor roof running along the east side of the court did not form the fourth side of a closed court, then Applicant is still in violation of 11 DCMR § 406.1. Applicant is still in violation of 11 DCMR § 406.1, because as District of Columbia's Exhibit C at page 1 shows, the width from the 1532/1530 Swann Street NW property line to the foot of the stairs leading to the third floor roof is only 9.7 feet. The minimum width of an open court applicable to this dwelling is 10 feet under 11 DCMR § 406.1; and, the architectural diagrams submitted by the Applicant during the permit application process (District of Columbia's Exhibit C at page 1) clearly label the width of this court as only "9.7". *See* District of Columbia's Exhibit C at page 1. This new shrunken open court would violate 11 DCMR § 406.1.

In effect Applicant is taking a conforming open court and turning it into either a non-conforming closed court. Or, in the alternative Applicant is taking a conforming open court and turning it into non-conforming open court. In either case Applicant is violating 11 DCMR §2001.3(b) which states:

"Enlargements or additions may be made to the structure; provided ...

(b) **The addition or enlargement itself shall:**

(1) Conform to use and structure requirements; and

- (2) Neither increase or extend any existing, nonconforming aspect of the structure; **nor create any new nonconformity** of structure and addition combined.” (Emphasis added)

C. The Projection of the Third Floor Roof Line At Least 4.14 Feet Out Over the Pre-existing Second Story Roof Deck Covers Over Part of A Pre-Existing Open Court And Creates A Second Floor Porch

The Applicant is creating a three level deck structure. The first level sits at the level of the pre-existing Second Story Roof Deck. The second level deck is about 8 to 9 feet above the Second Story Roof Deck and in effect provides a roof for part of the pre-existing Second Story Roof Deck. *See e.g.* Appellant Exhibit No. 7. The safety railing along the 1532/1530 property line has been replaced with a double sided wall approximately 9 feet high enclosing the entire west side of this new porch from floor to ceiling. The new stair structure encloses part of the east side of this new porch structure. The existing third floor exterior wall acts as the back to this new porch structure. About 65 percent of the sides of this porch appear enclosed.

This projection of the third floor roof along with the building of a nine foot side wall is an addition or alteration within the meaning of 11 DCMR §2001.3:

2001.3 Enlargements or additions may be made to the structure; **provided:**

- (a) **The structure shall conform to percentage of lot occupancy requirements ...** (Emphasis added)

4 The architectural diagrams, such as, District of Columbia Exhibit No. 1, show a roof extension of about 4.1 feet long. But, Appellant’s Exhibit Nos. 17 and 18, actual photos taken during construction, appear to show a much larger roof extension jutting out from the third floor roof line. *See also* Appellant Exhibit No. 7

In this case the lot occupancy is 71.4 percent far above the lot occupancy requirements. The permits at issue in this case should not have been issued; Applicant cannot make these additions and alterations as a matter of right, cannot seek to make them via a request for Special Exception, but must seek and be granted a variance to make these additions and alterations which extend the third floor roof line, build a nine foot wall along the 1532/1530 property line and create a porch on the second floor roof.

III. Permits B1206336 and B1209691 Do Not Comply With 11 DCMR §1501.1 and 1501.4 of the Zoning Regulations

The lot at issue, 1530 Swann Street NW, is a R-4 flat in the Dupont Circle Overlay District (DCOD) and must comply with 11 DCMR §1501.1 and 1501.4 of the Zoning Regulations.

For example, in Application No. 16684 Ms. Lucia Edmonds, whose property was located at 1610 15th Street, N.W., a few blocks from Applicant's property, sought

“variance relief from 2001.3(a), (b), and (c) to allow enlargement to a one-family dwelling; and special exception relief under 5 223.1 to allow extensions to a nonconforming rear yard [§404.1] and open court [§406.1].a variance under 11 DCMR §2001.3(a), (b) and (c) to allow enlargement and enclosure of an existing rear deck of a non-conforming three-unit building...”.

“The site is located in Square 193 on Lot 120 at premises 1610 15th Street, N.W. Lot 120 has a depth of 85 feet and a width of 19 feet, for a total lot size of 1, 615 square feet. A three-story, plus English basement, building is located on the property. The 2,868 square foot building was constructed in 1895, with 65 percent lot occupancy.” *Application No. 16684, Lucia Edmonds*, DECISION AND ORDER, May 1, 2001 at page 1.

The Board ultimately granted partial relief but denied the request to extend the deck. The

Board held:

“The building is located in the Dupont Circle Overlay District (DCOD). **The applicant must comply with the requirements of Chapter 15 of the Zoning Regulations,** as well as the requirements of the R-5-B District. **Of particular importance to this project are 1501.4 (a) and (e) of the Zoning Regulations** which identify the purpose of the DCOB as follows:

- (a) **To require a scale of development consistent with the nature and character of the Dupont Circle area in height and bulk; and to ensure a general compatibility in the scale of [buildings]** by restricting the maximum permitted height and floor area ratio . . .
- (e) To preserve areas planned as open gardens and backyards and to protect the light, air, and the privacy that they provide.”

(Emphasis added) *Application No. 16684, Lucia Edmonds*, DECISION AND ORDER, May 1, 2001 at page 3.

In its decision the Board further stated:

“The Dupont Circle Overlay District was created to control the height and bulk of buildings in the Dupont Circle neighborhood, among other reasons. **The overlay is mapped in combination with the underlying zone district to put controls in place to protect the neighborhood from excessive development.** In determining if a lot is overly developed, the lot occupancy and floor area ratio are two key components. The existing lot occupancy of the site exceeds the maximum percentage allowed by 10 percent.” (Emphasis added) *Application No. 16684, Lucia Edmonds*, DECISION AND ORDER, May 1, 2001 at page 4-5

In this case Applicant is constructing *a massive three level deck that from the Public Alleyway in the rear looks like a triple deck fortress.* See e.g. Appellant’s Exhibit No.11. See also Appellant Exhibit No. 6 which shows in visual context the very large scale of just the third level of this three level deck structure. **This deck is the only three level residential deck in the entire Dupont Circle Overlay District of which Appellant is aware.**

And, this is not just a three level deck. It has an outdoor bar, with plumbing, electricity, colored lighting and a cut out in the seven foot “decorative wall” on the third level that would fit an outdoor home entertainment center. *See Appellant Exhibit No. 2.*

The front wall facing Swann Street and the 7 foot “decorative wall” on the west side, are clearly visible in the day time from the Public Alley across from the front of 1530 Swann Street. *See Appellant Exhibit No. 9.*

The 7 foot “decorative wall” is also clearly visible from the opposite side of Swann Street walking from 16th Street towards 1530 Swann Street NW. *See Appellant Exhibit No. 10.*

The Applicant has also installed color lighting on the deck with a color wheel which changes color every few minutes like a Christmas tree color wheel. *See Appellant Exhibit No. 19* Picture Taken October 19, 2012 from the Public Alleyway across from 1530 Swann Street NW, looking up, showing the deck lit up with blue and green lighting. The building running along the left border of the picture is Appellant’s home, 1523 Swann St NW. *See Appellant Exhibit No. 20* Picture Taken October 19, 2012 from the Public Alleyway across from 1530 Swann Street NW, looking up, showing the deck lit up with green lighting. *See Picture Taken October 19, 2012 from the Public Alleyway across from 1530 Swann Street NW, looking up, showing the deck lit up with purple and green lighting.*

This deck structure is too high, too bulky, too visibly intrusive and is out of character with the purpose and intent of the Dupont Circle Overlay District. Indeed, it is probably the **only three**

level residential deck in the entire Dupont Circle Overlay District. The scale of this deck project is **not** consistent with the nature and character of the Dupont Circle area in height and bulk or with the existing human scale streetscapes; and is not compatible with the historic nature of the neighborhood the Dupont Circle Overlay District seeks to preserve and enhance.

The construction of this massive three level deck is incompatible with the nature and scale of the long existing decks on the abutting properties at 1528 Swann Street NW and 1532 Swann Street NW. *See e.g.* Appellant Exhibits 3, 6 and 8. This three level deck is inconsistent with the nature and scale of the rear Public Alley, dominating and visually overpowering views from the rear Public Alley; and, as such, is inconsistent with and incompatible with the nature, purpose and character of the Dupont Circle Overlay District.

This deck also seriously and intrudes upon and adversely affects the privacy and enjoyment of the Appellant in his own home. Appellant's third floor bedroom windows slant backwards against his roof. Applicant's deck structure is so high above the roof line and so forward that from that deck individuals standing on the deck can look down into Appellant's bedroom day and night – see Appellant lying on his bed – even see what color slippers Appellant is wearing on his feet while walking across his own bedroom floor. For example, *see* Appellant Exhibit No.16 which shows two workmen standing on the deck looking at Appellant, while Appellant is sitting on his bed. Appellant's front windows have a southerly exposure so the sun passes behind Applicant's house and shines right into the windows of Appellant's bedroom from mid-day, making it very easy to see into Appellant's bedroom to the very bedroom floor from Applicant's deck. Because of the way this

deck is constructed, Appellant has no privacy in his own bedroom, day or night.

For the reasons given above Appellant submits that Building Permits B1206336 and B1209691 were issued in error and the construction at issue in the permits violates the above cited Zoning Regulations.

Respectfully submitted,



Edward V. Hanlon
1523 Swann Street NW
Washington, DC 20009

CERTIFICATE OF SERVICE

I certify that on this date one copy of the foregoing was sent via facsimile to:

Jay A. Surabian, Esq.
Assistant Attorney General
Department of Consumer and Regulatory Affairs
1100 4th Street SW, 5th Floor
Washington, DC. 20024

Martin P. Sullivan, Esq.
Sullivan & Barros, LLP
1990 M Street NW, Suite 200
Washington, DC 20036

I certify that on this date one copy of the foregoing was sent first class postage pre-paid to:

Advisory Neighborhood
Commission 2B
#9 Dupont Circle, NW
Washington, DC 20036



Edward V. Hanlon

11/1/12

Date