

DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

EDWARD V. HANLON

Appellant

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No.: 18429

Hearing Date: December 4, 2012

**APPELLANT'S OPPOSITION
TO PROPERTY OWNER'S MOTION TO DISMISS FOR FAILURE TO PROPERLY
FILE AND FOR FAILURE TO STATE A ZONING ERROR (IZIS EXHIBIT NO. 25)**

Comes Now the Appellant, Edward V. Hanlon, and files this Opposition to the Property Owner's Motion to Dismiss for Failure to Properly File and for Failure to State a Zoning Error (IZIS Exhibit No. 25) and states as follows:

1. This Appeal was filed timely on June 11, 2012.
2. FORM 125 filed on June 11, 2012 states:

“Pursuant to §§ 3100 and 3101 of the Zoning Regulations of the District of Columbia, an appeal is hereby taken from the administrative decision of DCRA ...made on 4/10/12 ... Granting Permit B 1206336”
3. The Office of Zoning in its August 3, 2012 letter to the Property Owner described this Appeal as:

“Appeal of Edward V. Hanlon, pursuant to 11 DCMR §§ 3100 and 3101, from an April 10, 2012, decision by the Department of Consumer and Regulatory Affairs, to issue a building permit (#B1206336) allowing the construction of a roof deck in the DC/R-4 District at premises 1530 Swann Street, N.W. (Square 191, Lot 76).” IZIS Exhibit No. 12
4. In the initial Statement filed on June 10, 2012 Appellant wrote:

“Appeal of the Issuance of Building Permit B1206336 ... I hereby appeal the issuance on April 10, 2012 of Building Permit B1206336 ("Permit"). I live across the street at 1523 Swann Street NW...

"I also appeal the issuance of Building Permit B1209691 issued on or about June 5, 2012, which states in the "Description of Work" that it is a "Revision to existing building permit #B 12067336 – 4/10/12. Relocate rear exterior stair as per plans and plat for the Darren Binder SFD Property." *See* IZIS Exhibit No. 2, at 1-2

5. The Appellant's initial Statement then quoted the on-line description posted on the DCRA website of the work being done at 1530 Swann Street as:

"The proposed work is a new roof deck and to remodel existing rear roof deck per plans and Plat" *See* IZIS Exhibit No. 2, at 2

6. The Appellant's initial Statement (IZIS Exhibit No. 2) complains the deck is too high, too visible, too massive, too bulky, increases the structure's non-conformity, seriously affects the Appellant's privacy and Appellant's use and enjoyment of his own property, and is incompatible by nature, scale, and streetscape (from both the front and rear of the property) with the historic district in which it resides (the Dupont Circle Overlay District):

"This deck, as presently permitted and being constructed, will deprive me of privacy in my own bedroom. I will not be able to lie down on my own bed without people standing on this deck and being able to see me lying in bed." *See* IZIS Exhibit No. 2, at 4

"When I was taking the next picture while sitting on my bed, one of the two workmen in the picture saw me thru the window and called the other workman and pointed to me. In other words standing on this deck at around 11 am in the morning these workmen could see inside my bedroom from this deck." *See* IZIS Exhibit No. 2, at 4-5

"[The deck structure] covers over an additional approximately 25-35 square feet of the existing non-conforming side open court. The result appears to extend the existing non-conformity." *See* IZIS Exhibit No. 2, at 2

"[W]hat is being built is massively out of character with any other deck which has been built in this neighborhood since this neighborhood became

part of a historic district.” *See* IZIS Exhibit No. 2, at 2

“[This deck structure] is clearly visible from this rear public alley and is greatly inconsistent in character and size from other decks on the south side of the 1500 block of Swann Street. ...[it] visually overpowers the rear alley and deprives adjacent owners of privacy in their open rear courts and rear small lower level decks...” *See* IZIS Exhibit No. 2, at 6

“The below picture, taken from the middle of the rear public alley, shows how clearly visible and overwhelming this new deck will be as seen from rear public alley.” *See* IZIS Exhibit No. 2, at 7

“The existing walkout second floor deck (which sits on the second floor roof not raised above it) is being covered over.” *See* IZIS Exhibit No. 2, at 9

“[This deck structure] significantly alters the massing of the house at 1530 Swann Street, fails to respect existing scale and proportions of similar structures on the south side of the 1500 block of Swann Street and is not only clearly able to be seen from the 15 foot rear public alleyway in this historic district - it is massive, dominating and visually overwhelming. This new two level deck is not set back from the rear roofline so as to minimize visual impact from the public alley in the rear, this construction actually extends significantly out from the third floor roof line.” *See* IZIS Exhibit No. 2, at 6

7. On October 15, 2012 Appellant filed a supplemental Statement (IZIS Exhibit No. 17), explaining that

“Appellant Edward V. Hanlon is an **adjacent property owner**, living at 1523 Swann Street NW, across the Street from 1530 Swann. But for the public street Appellant’s house and 1530 Swann would touch each other adjoining at the front corner of 1530 Swann closest to 16th Street. Mr. Hanlon has lived in his house at 1523 Swann since 1995.” (Emphasis added) *See* IZIS Exhibit No. 17, at 6

8. On October 15, 2012 Appellant filed a supplemental Statement (IZIS Exhibit No. 17) showing the calculations determining the lot occupancy, concluding:

“the lot occupancy rate is at least 71.4 percent. The lot occupancy rate exceeds the maximum allowed in an R-4 zone (60%) and exceeds the maximum for special exception relief under 11 DCMR Sec. 233 (70%).” *See* IZIS Exhibit No. 17, at 6

9. Appellant's supplemental Statement (IZIS Exhibit No. 17) also again raised the issue that pursuant to the two permits at issue in this Appeal (Permit B1206336 and Permit B1209691) the existing non-conforming side open court was being reduced, increasing the non-conformity:

"Prior to the Permit being granted and construction beginning there was a 4 ft 6 inch Open Court shared with 1528 Swann.

Pursuant to the Permit this Open Court is being reduced from 4 feet 7 inches to approximately 1 inch. The Open Court has almost completely been destroyed, being covered over with a new landing and a new set of stairs more than 4 feet wide leading to level 2 and level 3 of this new deck." See IZIS Exhibit No. 17, at 6

10. Appellant's supplemental Statement (IZIS Exhibit No. 17) also demonstrates that what is being built under the above referenced two permits is not a simple deck laid upon the roof with a safety railing around it but a huge structure which is a **major addition and alteration** to the existing building:

"The building's rear roof line at its highest point in the back is being extended out from the back of the building 9.3 feet into the air according to the Plat submitted with the Application. This 9.3 foot extension extends out over the previously open deck that pre-existed on top of the second floor roof. It appears weather tight with the deck planks covered over with wood sheeting material. This then functions as a new roof for a **second floor addition** to the back of the house. Serving as a new roof for a second floor addition helps explain why this extension out from the roof line is built four feet lower than highest part of the deck." (Emphasis added) See IZIS Exhibit No. 17, at 3-4

11. Appellant's supplemental Statement (IZIS Exhibit No. 17) went on to explain that this **major addition and alteration** to the existing building included:

"An **eight foot high "decorative" wall** has been constructed along the

entire second floor party line with 1532 Swann ... That part of the eight foot wall which is underneath the roof extension goes from floor to ceiling is double sided with what appears to be a 6 inch inner core and the beams in that wall appear structural and are supporting the 9.3 foot new roof extension above it on that side of the building.” (Emphasis added) *See* IZIS Exhibit No. 17, at 3-4

12. In Appellant’s supplemental Statement (IZIS Exhibit No. 17), Appellant also

The Applicant, as discussed above is building a **solid 8 foot high wall under the 9.3 foot roof extension**. Then on **top of the roof extension** there is the second level deck with **another 8 foot high “decorative wall”**. This second eight foot wall also runs along one side of 1532 Swann’s Open Court. See Exhibit No. Thus, 1532 Swann, with two walls and the width of the new deck along its party line, is now effectively facing a **17 foot high wall** along the back part of its open Court.” (Emphasis added) *See* IZIS Exhibit No. 17, at 4

13. What is described above, which is being built pursuant to the two permits at issue, represents a significant enlargement and addition to the existing structure. The existing structure exceeds the percentage lot occupancy requirements for a flat in this R-4 zone. Thus, the issuance of Permits B1206336 and B1209691 was done in violation 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, 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) 11 DCMR §2001.3

14. In Appellant's Supplemental Statement in Response to The District of Columbia's Prehearing Statement (IZIS Exhibit No. 36) Appellant identified by regulation *number* the following zoning regulations violated by the issuance of B1206336 and B1209691:
- a. 11 DCMR §400.1
 - b. 11 DCMR §406.1
 - c. 11 DCMR §2001.3
 - d. 11 DCMR §1501.1
 - e. 11 DCMR §1501.4
15. Further, in issuing permits B1206336 and B1209691 and allowing the covering over of the side open court, the District of Columbia also appears to have wrongly permitted the covering over of a required window on both the second and third floors (thru which both natural illumination and natural ventilation previously took place). In allowing the covering over of the side open court the District of Columbia also appears to have wrongly permitted the covering over of what appears from the pictures filed on IZIS to be the gas furnace flue. *See, e.g.*, the picture of the side open court in Appellant's initial Statement (IZIS Exhibit No. 2 at Page 8 showing the pre-existing windows and pre-existing gas furnace flue.
16. As detailed above, the Appellant has sufficiently identified the errors he claims were committed by the District of Columbia in issuing permits B1206336 and B1209691 to allow this Appeal to precede. Even the attorney for the Property

Owner admitted as much in his November 2, 2012 IZIS filing (IZIS Exhibit No. 37), when he wrote:

“At the late date of November 1, Appellant finally chose to reference the Zoning Regulations which he claims were violated as part of the issuance of the subject Building Permits.” *See* Property Owners Motion to Dismiss Portions of the Appeal Because Appellant is Not An Aggrieved party Under the Zoning Act and the Zoning Regulations, IZIS Exhibit No. 37 at 1.

It is clear from IZIS Exhibit No. 37, filed more than one month before the December 4, 2012 hearing, that the Property Owner is aware of and understands what the allegations are and what zoning regulations are alleged to have been violated in issuing permits B1206336 and B1209691.

Accordingly, for all the foregoing reasons Appellant requests that the Property Owner’s motion to dismiss be denied.

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 mailed first class postage pre-paid to:

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A handwritten signature in black ink, appearing to read "Edward V. Hanlon", written over a horizontal line.

Edward V. Hanlon

12/3/12

Date