DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

EDWARD V. HANLON Appellant	* * * * * * *	No.: 18429

APPELLANT'S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

Comes Now the Appellant, Edward V. Hanlon, and files Appellant's Proposed Findings of Fact and Conclusions of Law in the above captioned matter and states as follows:

FINDINGS OF FACT

The Site and Surrounding Area:

1. The subject property is located at **1530 Swann Street NW**, Square 191, Lot 76 ("1530 Swann" or "Subject Property"). The Subject Property is in an R-4 Zone District.

2. The subject property is lies within the Dupont Circle Overlay District.

3. The lot is 17 feet wide and 68 feet long. The total lot area is 1,156 square feet.

4. The lot is improved with a building which is 46.9 feet long and 17 feet wide for a total square footage of **797.3 square feet**. *See* the architectural diagram submitted by the homeowner to DCRA at IZIS Exhibit No. 17E, page 1; and, *also see* the calculations of square footage contained in Appellant's Supplemental Statement at pages 8 and 9 which is found at IZIS Exhibit No. 36

Board of Zoning Adjustment
District of Columbia
CASE NO.18429
EXHIBIT NO.51

5. The building is a two family flat.

6. The building was originally a one family flat. However, the basement of the building was converted in 2010 and 2011 into a second flat, making the building presently a two family flat.

7. In 2010 and 2011 an areaway was constructed out of part of the rear yard to build exterior stairs and provide light to this new basement flat. This areaway contains seven (7) steps leading to a below grade basement door. The areaway is 36'' wide and at least 9.4 feet long, making the areaway at least **28** square feet. *See* the calculations in IZIS Exhibit No. 36; *see also* the photograph of the areaway in IZIS Exhibit No. 17C, second photograph.

8. The lot occupancy is 797.3 square feet + 28 square feet = 825.3/1,156 = **71.4%** *See* the calculations in IZIS Exhibit No. 36.

9. The building fronts onto Swann Street NW. In the rear of the building is a Public Alley 14 to 15 feet wide, running in a straight line connecting 16th Street NW with 15th St NW. *See* IZIS Exhibit No. 17E, page 1

10. Several of the buildings along this rear Public Alley behind the Subject Property have been converted into alley dwellings and are occupied as residences. *See e.g.* IZIS Exhibit No. 17B first photograph; *see also* IZIS Exhibit No. 17A photographs 2 and 3.

11. The 1500 Bloc of Swann Street NW consists of two and three story Victorian row dwellings originally built in the 1880's. The streetscape on both sides of Swann Street is lined with historic gingko trees and herringbone brick sidewalks, that give a unique historic Victorian feel to the 1500 bloc of Swann Street NW. *See* IZIS Exhibit No. 17E at pages 4 and 5

12. Numerous dwellings in the neighborhood and two of the dwellings on the 1500 bloc of Swann St NW have Historic Preservation Easements listed on the website of the D.C. Historic Preservation Office. The building abutting the Subject Property on the east side, 1528 Swann Street NW, is one of those dwellings listed as having a Historic Preservation Easements held by The L'Enfant Trust.

13. The building occupying the Subject Property is three stories high in the front facing Swann Street and two stories in the rear facing the rear Public Alley. *See* IZIS Exhibit No. 17E, page 3, showing the rear of 1528, 1530 and 1532 Swann Street, each originally with very similar looking decks on their second floor roofs.

14. The third story of the dwelling on the Subject Property is a partial story (three stories in the front facing Swann Street and two stories in the rear facing the rear Public Alley. Prior to the issuance of the two permits at issue in this case there was a roof deck laid ***flat*** on the roof of the second story in the rear of the building (adjusted only for the slope of the roof from west to east) and surrounded only by a low safety railing of spaced 2x4s. There was no fence or wall surrounding this

deck and the deck was not otherwise raised above the height of the roof. *See* IZIS Exhibit No. 17E, page 3, the red building is the Subject Property.

15. As can be seen from the pictures in the record, both abutting properties, 1532 Swann Street NW and 1528 Swann Street NW, also had three stories in the front (*see e.g* IZIS Exhibit No. 17E, page 6) and two stories in the rear facing the rear Public Alley; *see* IZIS Exhibit No. 17E, page 3. Both of these abutting properties also and similar small roof decks laid flat or nearly flat on their second floor roofs in harmony with each other and with the pre-existing second floor walkout deck laid on the roof of the Subject Property. S*ee* IZIS Exhibit No. 17E, page 3

16. The properties on the south side of the 1500 bloc of Swann Street which have decks have small decks generally laid over a rear second floor roof. The abutting properties do not have third floor roof decks.

17. The rear Public Alley behind the Subject Property is characterized by low scale development, rear yards, most have partial third stories, none have decks on the third floor roof.

18. Appellant's house is located at 1523 Swann Street NW, across the street from the Subject Property. But, for Swann Street running between them, 1523 Swann Street NW (Appellant's house) and 1530 Swann Street NW (the Subject Property), would touch each other at the northwest corner of the Subject Property.

19. Appellant's house is an adjacent property to the Subject Property.

20. Appellant is an adjacent property owner.

21. Appellant's house faces South and the windows on his third floor bedroom slope backwards against the roof. Appellant has testified he has no privacy in his own bedroom because people standing on the top level of this deck can see right into Appellant's bedroom, day and night, all the way down to the floor. *See e.g*. IZIS Exhibit No. which shows workman standing on the deck looking at Appellant as Appellant sat on his own bed. *See also* Appellant's testimony at the December 4, 2012 public hearing:

> "My roof slants backwards on the top floor. Slants backwards. So, the windows slant backwards. The Applicant's deck [sic] is higher than my bedroom window. So, standing on the deck, the Applicant [sic] can see down into my bedroom all the way to the floor. They can see me on my bed. They can see whether I have slippers on or I don't have slippers on." December 4, 2012 Transcript at 208

Appellant also testified to an incident which occurred in early November about being watched from this deck while Appellant was standing in his bedroom more than 12 feet away from the bedroom widow. December 4, 2012 Transcript at 208-10

22. A public alleyway runs alongside Appellant's house on the west side across Swann Street from the Subject Property.

23. The permits at issue in this Appeal allow the construction of the ***only*** known three level deck structure attached to a single residential flat in the entire Dupont Circle Overlay District. *See* December 4, 2012 Transcript at 211

24. Pursuant to Building Permit No. 81206336 the top level of the this three level deck has a set back only 11.5 feet from the front of the building. The third level deck then completely covers over the remaining third floor.

25. The height of the floor of third level deck is a minimum of four feet above the surface of the roof under it. The third level roof slopes downward towards the rear of the dwelling, making the distance between the surface of the roof and the floor of the deck between 4 and 5 feet towards the rear of the third level deck. The pictures in the record taken during construction also show the floor of the third level to be chest high to the workmen standing on the roof. *See e.g.,* IZIS Exhibit No. 17E, page 6, showing one of the workman during construction standing on the third floor roof, the supports for the floor of the deck are at or above the workman's chest level. The picture is consistent with the floor of the deck being 4 feet above the roof at the point closet to Swann Street. Because, the roof slopes towards the rear of the property, the back edge of the third level of this deck is between 4 and 5 feet above the roof. This is not a deck which sits on the roof.

26. The artist rendering of this structure submitted by the homeowner, Mr. Binder, during the permit process show that four steps (or three feet) lead down from the third level deck to the second level deck. *See* IZIS Exhibit No. 17E, page 2

27. The second level deck is ***not*** constructed on or over ***any*** pre-existing roof. *See* the photographs in IZIS Exhibit No. 18. The second level deck is ***not*** a roof deck.

28. It is a misnomer to refer to the second level deck as a roof deck.

29. The second level deck is deck projecting out from the side of the house, projecting **12.2** out over a pre-existing open court which existed on top of the second floor roof. *See* the photographs in IZIS Exhibit No. 18.

30. The second level deck is held up by four 6x6 vertical supporting beams which are between 8 and 9 feet tall. This can be seen for example in the pictures at IZIS Exhibit No. 17E

31. The second level deck has an outdoor bar, hot and cold running water, lighting, electricity and a vertical wall on the west side of the deck rising 6.5 to 7 feet above the second level deck floor.

32. The third level deck has electricity, outdoor lighting which can bath the deck in rotating colored lighting like a disco or fast spinning Christmas tree color wheel, changing every few seconds from purple, to green to orange to blue, which can

easily be seen from streetscapes around the property: in front of the building on Swann Street, at the entrance to the Public Alley across the street from Subject Property, from Public Alley at the rear of the Subject Property and on the sidewalk opposite the Subject Property. *See* IZIS Exhibit No. 26 which contains 3 pictures taken standing on the Public Alley Way next to Appellant's house, looking up. These three pictures show the deck changing color from blue to green to purple. (It changes to orange, as well). Appellant has stated in the record without contradiction that the colors change every few seconds like a spinning Christmas color wheel.

33. Even in daylight the front wall of this deck is easily visible from the Public Alley next to Appellant's house. *See e.g*. IZIS Exhibit No. 17E, page 9 which is a picture taken in daylight looking up.

34. The third level deck also has a large wall on the west side rising at least 6.5 to 7 feet above the third level deck with electrical hookups. The artist rendering of this deck supplied by the homeowner during the permit process shows a wall opening which would accommodate an outdoor entertainment center, as well as, permanent built-in lounge seating.

35. The photographs in the record show that this third level west side wall is easily visible from the sidewalk on Swann Street opposite the Subject Property, from several houses down the 1500 block of Swann Street (*See* IZIS Exhibit No. 42 which shows the brown plywood back of this "decorative wall" thru the trees), as

well as, from the rear Public Alley (*See e.g*. IZIS Exhibit No. 17E at 7 and IZIS EXHIBIT 17A at 1) and from the entrance to the Public Alley which runs next to Appellant's house (IZIS Exhibit No. 17E at 9).

36. The photographs in the record also show the 42'' front wall of this third level deck is easily visible from the entrance to the Public Alley across the street from the Subject Property. *See* IZIS Exhibit No. 17E at 9

37. The photographs in the record taken from the rear Public Alley show that a nine foot wall was constructed on the roof of the pre-existing second floor on the west side, tucked under the new 12.2 foot deck projection to completely enclose on the west side the area under the 12.2 foot deck projection. *See e.g.* IZIS Exhibit No. 18 at 7 and IZIS Exhibit No. 17A at 1.

38. IZIS Exhibit No. 18 also shows the large room, a large useable space, which has been added underneath 12.2 foot deck projection. The roof of this room is the deck projection which has been built 3 feet lower than the third level deck, walled in on the west side, as shown in the pictures, subsequently walled in the front with at least a 42" wall (*see* IZIS Exhibit No. 17A at 1) and walled in on the east side by at least the stairwell.

39. A second wall which forms the backdrop for the new outdoor bar on the second level 12.2 foot deck projection sits partially above the nine foot wall below it. The

floor of the deck projection is supported by 2x12s. The result is that the homeowner has built a **17 foot high wall** along the west side of his property line with 1532 Swann Street. This 17 foot high wall is easily visible from the rear Public Alley (*See e.g.* the first picture of IZIS Exhibit No. 17A)

40. In terms of scale, the first picture of IZIS Exhibit No. 17A, shows the homeowner standing on the lowest level of this three level deck and being towered over by the newly constructed wooden walls along the property line with 1532 Swann.

41. Along part of the party line with 1532 Swann the height of the Subject Property's wall has been raised from the original 22 feet shown in the homeowner's architectural diagrams (*See* Exhibit C of the District of Columbia's Pre-Hearing Statement, IZIS Exhibit No. 24) to 39 feet, a **75%** increase in the height of wall along the party line with 1532 Swann Street.

42. On the east side in the rear along the property line with 1528 Swann Street, there existed a first floor addition, built pursuant to a special exception granted in 2003. *See* IZIS Exhibit No. 20. The special exception granted was limited to a first floor addition. The representative of the homeowner represented to the Board:

> "it does not affect the light or the air movement. There's already a 7'6" privacy fence, and this extends slightly above that, but I showed Mr. Jackson that really, from the alley, you can't see it unless you're up above.

We're not going to add lighting or any other kind of architectural embellishment." *See* IZIS Exhibit No. 20 at 9.

43. Following construction of the one story addition in 2003, there continued to be an open court on the east side along the property line with the first floor roof forming the bottom of the open court, bounded on two sides by the dwelling of 1530 Swann and on a third side by the property line with 1528 Swann. This open court measured 4.5 feet wide by approximately 9 feet deep.

44. The first of the two building permits at issue in this case, Permit No. B 1206336, allowed the construction of a stairway and landing over this side open court leading from the lowest of the three decks to the second level deck. *See e.g.,* photographs at IZIS Exhibit No. 18.

45. An examination of the architectural diagrams submitted by the homeowner shows the size of the open court *before* construction of the stairway (in blue) on IZIS Exhibit No. 34 is 4.5 feet wide.

46. IZIS Exhibit No. 34 shows in red the dimensions of the open court ***after*** construction of the stairway with landing. The open court has been reduced from being 4.5 feet wide to being only 1.3 feet wide. The homeowner's architectural diagrams approved during the permit process clearly show this side open court is has not been eliminated but has been made significantly narrower.

45. Building Permit B1209691 issued on or about June 5, 2012 is a small revision of

prior Permit No. B1206336. The Building Plan Review Status Report (IZIS Exhibit No. 30) states:

> "Zoning Review Approved . RE-DESIGN THE REAR EXTERIOR **STAIR BY MOVING FURTHER MAX. 6"** FROM THE SIDE OF THIS SFD'S EAST SIDE IN THE R-4 DC/R-4 RESIDENTIAL ZONE WITH THE DUPONT CIRCLE OVERLAY DISTRICT." (Emphasis added)

46. Even with the June 5, 2012 revision the east side open Court was ***not*** eliminated but reduced to about 9".

47. The east side open court could not be eliminated because the flue for the basement gas furnace rises up thru this side open Court. *See e.g*. the picture of the silver flue in the back of the open court in IZIS Exhibit No. 18, first photograph.. Eliminating the east side open court would have been impossible because that would be the same as entirely covering over the flue to the gas furnace with a staircase, which cannot be permitted. This reason may be the reason the June 5, 2012 permit specifically states the staircase can me moved eastward a "maximum" of 6" – the flue has to vent.

48. The true massiveness of this three level deck compared to its environment can be seen from IZIS Exhibit 17E at 6 which shows just the third level of this deck under construction compared to the abutting and background properties and IZIS 17A at 1which shows the fortress like appearance of this massive deck from the ground of the rear Public Alley looking up.

49. This deck is out of character with its surroundings in terms of its appearance and massing – it is too big, too tall, too massive and it visually overwhelms.

CONCLUSIONS OF LAW

I. THIS THREE LEVEL DECK WITH ITS TOWERING WALLS, AMENITIES AND NEWLY ROOFED OVER USABLE SPACE IS AN "ADDITION".

Although, the term "addition" is not expressly defined in the Zoning Regulations, pursuant to 11 DCMR § 199(g), "words not defined ***shall***[1] have the meanings given in Webster's. (Emphasis added). *See* 11 DCMR § 199(g). Accordingly, Webster's Unabridged Dictionary (3rd Edition) defines the term "addition" as "anything added: INCREASE". Therefore, in the absence of a statutory or regulatory definition, the Webster's definition controls when determining what structures are properly categorized as an "addition".

In the plain English meaning of the word "addition" found in Webster's, indeed in every plain English meaning of the word "addition" this three level deck structure with walls as high as 17 feet and with the creation of a new roofed over walk out area (created by the 12.2 foot deck extension, projecting out over a previous open area), walled up completely on the west side, at least half walled in the front and covered over on the east side by the new solid stairway and landing, in any ordinary person's understanding of this fortress like structure – this is an addition within the meaning of Webster's.

In its Pre-Hearing Statement the District of Columbia referred to the case of Appeal No.

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1 The Merriam Webster defines "shall" as
a—used to express a command or exhortation <you *shall* go>
b—used in laws, regulations, or directives to express what is mandatory <it *shall* be unlawful to carry firearms>

17971 of Outerbridge and Georgina Horsey. But, this case is not Outerbridge. The District's "Memorandum of Law Regarding Landings and Roof Top Decks on Nonconforming Structures" filed in the record of the Outerbridge case specifically states:

> "The deck at issue is situated on the second floor level of the row house and was constructed on **top of an existing first floor roof** at the rear of the Property. According to the plans submitted with the building permit application, **the deck and deck railing are not higher than the existing structure**." (Emphasis added) The District's "Memorandum of Law Regarding Landings and Roof Top Decks on Nonconforming Structures" filed in Outerbridge at 8.

The deck in Outerbridge was laid upon the roof and had a simple safety railing around it. The third level of the deck in this instant appeal is not laid upon the roof, but the floor of this deck sits 4 to 5 feet above the roof, has a decorative wall on the west side of between 6.5 and 7 feet high, has a wall in front and has space which can be used as storage space underneath.

The second level of the deck structure is in no way like Outerbridge. The second level is not laid upon any roof but projects out over the open area above the second floor roof, has hot and cold running water, electricity, a bar, lighting, and by lowering its level three feet from the top deck, enables this second level deck to also form a roof over the next lower deck.

The lowest of the three decks is completely enclosed on the west side by an 8 to 9 foot wall. Further, one wall sits upon another wall on the west side so that the effect is to raise a 17 foot high wall along part of the party line with 1532 Swann.

No reasonable person would say a 17 foot wall is not, in plain English, an addition. This is especially so, since according to the architectural diagrams the pre-existing west side wall was only 22 feet high. The new structure comes close to doubling the height of the original wall. No reasonable person using the word addition in the plain Webster's sense would say a 12.2 foot

projection out from the side of the house, which also serves the dual role as a roof for the level below is not an addition. Reviewing the architectural diagrams, this projected deck is creating at least 120 square feet of covered, useable space underneath it with full or partial walls on all sides.

The Subject Property already has a lot occupancy rate in excess of 70%. The homeowner could not as a matter of right build this addition. Occupying more than 70% of the lot, this addition could not be built by seeking a Special Exception. And, the circumstances do not justify the granting of a variance. The homeowner could not meet the factors necessary for the granting of a variance.

II. 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. 11 DCMR §1501.1 states in part:

> 1501.1 The Dupont Circle area is a unique resource to the District of Columbia that must be preserved and enhanced. **Strong protections** are needed to retain its **low scale**, predominately residential character, independent small retail businesses, **human scale streetscapes, and historic character …** (Emphasis added)

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 DCOD 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.* **This deck is the only identified three level deck for a residential flat in the entire Dupont Circle Overlay District identified in the record of this case.**

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.

The front wall facing Swann Street and the 6.5 to 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.

The "decorative wall" is also clearly visible from the opposite side of Swann Street walking from 16th Street towards 1530 Swann Street NW.

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.

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 deck for a residential flat 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. 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. 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.

Further, it was an error for Department of Consumer and Regulatory Affairs, to issue a building permit (#B1206336) allowing the construction of this roof deck on the condition that:

"Roof deck/wall **is not be visible from Swann Street**." (Emphasis added)

Clearly, the roof deck and walls are visible from Swann Street. The photographs in the record show this.

However, this is not a sufficient restriction. In this unique historic area visibility from **all streetscapes, not just from Swann Street** in the front, but visibility from the Public Alley across the street from the Subject Property and visibility from the rear Public Alley behind the subject property **must** be taken into account. The project must not intrude upon the streetscape from any public of the public streets and public alleys, not just from the front of the house looking straight up.

It was error for the Department of Consumer and Regulatory Affairs to limit the visual impact to Swann Street only.

III. 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. <u>The East Side Rear Court Is Being Reduced From 4'6" To Less Than 10"</u>

In 2004 the prior owners of 1530 Swann Street NW filed for a Special Exception to build a **<u>first floor</u>** '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* IZIS Exhibit No. 33.

Under the first permit granted the East Side Rear Court to 1.3 feet in width (17 feet – 15.7 feet). 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. (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.

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 **<u>6 inches</u>** further to the east.

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:

17.0' (lot width) – 16.2' (width of structure in the rear) = 0.8' (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.

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.
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1990 M Street NW, Suite 200
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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 — 2/4/13
Date