

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

Application of Linn Meyers
1741 Kilbourne Place, N.W.
Square 2602, Lot 103

BZA Application No. 18452
Public Hearing: _____
ANC 1D

STATEMENT OF THE APPLICANT

July 27, 2012

This Statement is submitted on behalf of the owner, Linn Meyers ("**Applicant**") by her attorneys, Greenstein DeLorme & Luchs, P.C., by John Patrick Brown, Jr., Esquire and Kate M. Olson, Esquire, in support of an application for the area variance ("**Application**") described below.

I. NATURE OF RELIEF SOUGHT

The Application seeks an area variance from the minimum 900 square feet of land area per dwelling unit requirement, under 11 DCMR Section 401.3 of the Zoning Regulations, to obtain approval for the continued use of the pre-1958 building in its existing configuration as a three (3) unit apartment house in the R-4 District.

II. JURISDICTION OF THE BOARD

The Board has jurisdiction to grant the relief requested pursuant to pursuant to Section 3103.2 of the Zoning Regulations.

**III. DESCRIPTION AND HISTORY OF THE PROPERTY AND
SURROUNDING AREA**

The property, located at 1741 Kilbourne Place, N.W., is located in Ward 1 (Square 2602, Lot 103) (the "**Property**"). The Property includes an existing three (3) story with lower level row house built in 1910, which predates the May 12, 1958 Zoning Regulations.

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BOARD OF ZONING ADJUSTMENT
District of Columbia

CASE NO. 18452

EXHIBIT NO. 4

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Board of Zoning Adjustment
District of Columbia
CASE NO.18452
EXHIBIT NO.4

Over the years, Certificate of Occupancy records show the Property has been used for a variety of multiple-dwelling unit uses, including:

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- Prior to 1948:** Tenement House.¹ Exhibit A.
- November 1948:** Rooming House.² Exhibit A.
- June 1950:** Apartment House.³ Exhibit B.
- December 1953:** Rooming House. Exhibit C.
- October 1966:** Rooming House (less than 5 roomers). Exhibit D.

The Property is zoned R-4 and is within the Mount Pleasant Historic District. See Zoning Map, Exhibit E. The Property is located in a residential neighborhood and has two off-street parking spaces accessed from the rear twenty (20) foot wide public alley.

In 2008, the Property was purchased at foreclosure by a partnership. The Applicant, a local artist, was one of four minority partners, including her now ex-husband. At the time of the purchase, the Property was configured as two units. The first unit included the lower level and first floor with two (2) bedrooms and two (2) baths in approximately 2,150 square feet. The lower level was connected to the first floor by an interior staircase that was not original to the Property. The lower unit was accessible from the front lower entrance and the rear lower entrance, plus a 1st floor (common area) entrance. The second unit was accessed from the first

¹ Tenement house – a building or part of a building containing three (3) or more tenements, [one (1) or more habitable rooms in an apartment house, under the exclusive control of the occupant of the apartment house] or any building or part of a building containing any combination of three (3) or more tenements and apartments. 11 DCMR § 199.1.

² Rooming house – a building or part thereof that provides sleeping accommodations for three (3) or more persons who are not members of the immediate family of the resident operator or manager, and in which accommodations are not under the exclusive control of the occupants. A rooming house provides accommodations on a monthly or longer basis. The term “rooming house” shall not be interpreted to include an establishment known as, or defined in this title as, a hotel, motel, inn, bed and breakfast, private club, tourist home, guest house, or other transient accommodation. Id.

³ Apartment house – any building or part of a building in which there are three (3) or more apartments, or three (3) or more apartments and one (1) or more bachelor apartments, providing accommodation on a monthly or longer basis. Id.

floor, front and rear, and included four (4) bedrooms and two (2) baths in approximately 1,475 square feet on the second and partial third floors.

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After the purchase, the partnership made changes to the Property which created the current three-unit configuration. This work involved the removal of interior stairs between the lower level and first floor which created the third unit on the lower level. The Applicant did not reside in the Property and was not the decisionmaker in the partnership. However, in the course of her 2010 divorce and property settlement, the Applicant became the sole owner of the Property. The Applicant's ex-husband has since moved out and, as of November 2010, the Applicant resides in the first floor apartment unit with her young son. The Applicant, as sole owner, wishes to bring her Property into compliance with DC Zoning Regulations and seeks to obtain a certificate of occupancy for the three apartment units. In addition to the Applicant and her son living in the first floor unit, the two other rental units also have tenants living in them.

Description of the three units:

Basement Apartment (Rental): Approximately 1,075 square feet with separate front and rear entrances, two (2) bedrooms, one (1) bathroom, and access to the shared backyard and rear parking area ("Basement Apartment").

First Floor Apartment (Owner Occupied): Approximately 950 square feet with a front entrance vestibule shared with the upstairs apartment and private rear entrance. The unit has one (1) bedroom, one (1) den, one (1) bathroom, and rear access to the shared backyard and rear parking area. ("First Floor Apartment").

Top Floor Apartment (Rental): Approximately 1,475 square feet with a front entrance vestibule shared with the First Floor Apartment. From the entrance vestibule, a separate entrance leads to the unit on the second and partial third floor, including, four (4) bedrooms, two (2)

bathrooms, an exterior stairwell for access to the shared backyard and rear parking area (“**Top Floor Apartment**”). See attached Floor Plans of all three (3) units, Exhibit F.

IV. EXISTING AND INTENDED USE

The Property is a three (3) unit apartment house, which includes one (1) owner-occupied unit on the first floor. The house is currently a non-conforming structure based on the required minimum lot area dimensions. The Applicant does not propose any additional changes to the Property and would like to continue the current use as a three (3) unit apartment house. The Applicant seeks to comply with DC Zoning and therefore requests a variance from the minimum lot dimensions under Section 401.3.

V. RELIEF NEEDED FROM SECTION 401.3

The Property is conforming with respect to both lot occupancy and lot width. When converting a building to an apartment house in the R-4 zone, the Zoning Regulations allow the owner to retain the lot occupancy as of the date of conversion. The width of the Property is 18.5 feet (minimum width of lot required is 18 feet). The Property would ordinarily be conforming with respect to minimum lot area since the minimum of 1,800 square feet is required in the R-4 zone and the total lot size of the Property is 1,943 square feet. However Section 330.5, allows for the conversion of a building existing before May 12, 1958 to an apartment house as a matter of right in the R-4 Zone District as long as it complies with Sections 401.3 (minimum lot dimensions) and 403.2 (percentage of lot occupancy) of the Zoning Regulations.⁴

Under Section 401.3 a conversion of a building or structure to an apartment house is allowed in the R-4 zone provided it has the requisite minimum lot area of 900 square feet per apartment or bachelor apartment. Section 401.11 also states that such a conversion may not be

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⁴ No relief from Section 403.2 is requested since the Applicant does not intend to increase the lot occupancy.

renovated or expanded so as to increase the number of dwelling units unless there is 900 square feet of lot area for each dwelling unit, both existing and new.

Since the conversion from a flat into an apartment house requires a lot area of 900 square feet for each apartment unit and the Applicant has three (3) units in the apartment building, the minimum required lot area is 2,700 square feet. As the total area of the Property is only 1,943 square feet, the per unit area would be less than the 900 square feet minimum required. As such, the Applicant seeks an area variance from this requirement in order to comply with Zoning.

VI. THE APPLICATION MEETS THE REQUIREMENTS FOR THE REQUESTED AREA VARIANCE

In order to satisfy the standards for area variance relief, the Applicant must satisfy a three part test:

- (1) the property must be subject to an extraordinary or exceptional situation or conditions;
- (2) a practical difficulty will result if the applicant is required to satisfy the strict application of the Zoning Regulations; and
- (3) no harm to the public or to the zone plan will occur as a result of the approval of the variance application.

See Gilmartin v. District of Columbia Bd. Of Zoning Adjustment, 579 A.2d 1164, 1167 (D.C. 1990)

The Applicant meets the variance test as follows:

A. An extraordinary or exceptional situation or condition is inherent to the Property

The D.C. Court of Appeals in Clerics of St. Viator v. D.C. Board of Zoning Adjustment, 320 A.2d 291 (D.C. 1974) held that the exceptional situation or condition standard goes to the “property” not just the “land”; and that “property generally includes the permanent structures

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existing on the land [footnote omitted].” *Id.* At 293-294. The Court held that the exceptional situation standard of the variance test may be met where the required hardship inheres in the land, or the property (i.e. the building on the land).

In this instance, by the time the Applicant took sole possession and control of the Property, the interior remodeling was already finished with the third apartment unit, the Basement Apartment, having already been created. The access between the first and second floors was severed when the interior stairwell, that once connected the floors, was completely removed. There is currently no shared internal access between the three units. This should be distinguished from a case where an applicant has a two-apartment unit building and requests a variance from Section 401.3 to convert it into apartments so as to add additional units. Instead, this case is an exceptional situation, since the work at the Property was completed prior to the Applicant’s sole ownership and control. The Applicant does not plan to change any of the interior or exterior of the Property, except as where required by the DC Building Code.

B. A practical difficulty exists in satisfying the strict application of the requirements of the Zoning Regulations

It is important to note how the DC Court of Appeals has defined “practical difficulty.” In reviewing the standard for practical difficulty, the D.C. Court of Appeals stated in Palmer v. D.C. Bd. Of Zoning Adjustment, 287 A. 2d 535, 542 (D.C. 1972) that, “[g]enerally it must be shown that compliance with the area restriction would be unnecessarily burdensome. [footnote omitted]. The nature and extent of the burden which will warrant an area variance is best left to the facts and circumstances of each particular case.” In area variances, applicants are not required to show “undue hardship” but must satisfy only the “the lower ‘practical difficulty’ standards.” Tyler v. D.C. Bd. Of Zoning Adjustment, 606 A.2d 1362, 1365 (D.C. 1992), citing Gilmartin v. D.C. Bd. Of Zoning Adjustment, 579 A.2d 1164, 1170 (D.C. 1990). Finally, it is

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well settled that the BZA may consider “. . . a wide range of factors in determining whether there is an ‘unnecessary burden’ or ‘practical difficulty’ . . .” Gilmartin, 579 A.2d at 1171, citing Barbour v. D.C. Bd. of Zoning Adjustment, 358 A.2d 326, 327 (D.C. 1976). See also, Tyler v. D.C. Bd. of Zoning Adjustment, 606 A.2d 1362, 1367 (D.C. 1992). Thus, to demonstrate practical difficulty, the Applicant must show that strict compliance with regulations is burdensome, not impossible. The Applicant, as demonstrated below, meets this standard.

The Applicant is faced with a practical difficulty due to the fact that she took sole ownership and control of this Property after the interior had already been remodeled to remove the stairs and add a third apartment unit. By not granting a variance, it would preclude the Applicant from using this Property in its current form. The Applicant lives with her son in the First Floor Apartment and has tenants living in both the Basement and Top Floor Apartments. The Applicant counts on the tenants’ rent as a source of income. It would be unnecessarily burdensome to require the Applicant to open up the floor/ceiling between the first floor and lower level and install a stairwell, especially in light of the fact that the first floor is the smallest of the units and benefits from not having a stairwell as part of the unit.

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C. **No harm to the public good or to the zoning plan will occur as a result of the approval of the variance application**

Relief can be granted without the detriment to the public good. The Applicant only requests a variance to allow the existing three (3) unit apartment building to be in compliance. In all other respects, the Property complies with the applicable Zoning Regulations. The two (2) parking provided exceeds the minimum required. The tenants have the option and first priority for the parking at the rear of the Property. Since the Applicant is not making any exterior additions or alterations there are no adverse impacts on the surrounding properties.

VII. EXHIBITS IN SUPPORT OF APPLICATION

- Exhibit A: 1948 Tenement and Rooming House Records.
- Exhibit B: 1950 Apartment House Certificate of Occupancy.
- Exhibit C: 1953 Rooming House Certificate of Occupancy.
- Exhibit D: 1966 Rooming House (less than 5 roomers) Certificate of Occupancy.
- Exhibit E: Portion of the Zoning Map showing the Property.
- Exhibit F: Floor Plans for the three units.

VIII. CONCLUSION

For all of the above reasons, the Applicant is entitled to the requested area variance.

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Respectfully submitted,

GREENSTEIN DELORME & LUCHS, P.C.

By: 
John Patrick Brown, Jr.

By: 
Kate Myers Olson

1620 L Street, N.W., Suite 900
Washington, D.C. 20036
Telephone: (202) 452-1400

Attorneys for Applicant

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EXHIBIT A

Permit No. 35-336-48
Issued 11-16-48

WRITE WITH INK
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APPLICATION FOR CERTIFICATE OF OCCUPANCY

2013 JUL 27 AM 1:42

Date July 25, 1948

J. M. Lambert, owner

Name of proposed occupant ~~James M. Lambert~~ Verna Joe Barton, Agent

Premises number 1741 Eiltourne Place, N. W.

Lot number 103

Square number 2602

To be used as ~~three apartments (light house keeping units)~~ Rooming House
Special Home

Last used as 8879

Material of building Brick (row)

No. of stories high three stories plus basement

Which floor do you propose to use? none all

TO BE FILLED IN BY CLERK

Use Res

Height 3 1/2

Area

Transcript of No.

Police survey

Building permit

Owner of building (or agent)

Verna Joe Barton, Agent

Address 1741 Eiltourne Place, N. W.

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OFFICE OF THE
DIRECTOR OF INSPECTION

Name of applicant

Verna Joe Barton, Agent

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EXHIBIT B

Form 6-1 C29

CERTIFICATE OF OCCUPANCY

No **A 4604**

Washington, D.C. **6-8-** 1960

Permission is hereby granted to **David Hattery**

to use the **entire building** floor(s) of the building located on lot **108** square **2802**

known as premises **1761 Millington Place, N. W.** for the following

purpose(s) **Apartment**

THIS CERTIFICATE SHALL BE POSTED CONSPICUOUSLY ON THE ABOVE PREMISES AT ALL TIMES

This Certificate of Occupancy has not been renewed unless there is a change in (1) the type of business, (2) address of business, (3) ownership and business, or (4) part of the building used for the business. **SEE** Should there be any change in any of the foregoing items a **SEE** Certificate of Occupancy must be obtained.

CENTRAL PERMIT BUREAU, GOVT. OF DIST. OF COL.

OFFICE COPY

ZONE **E-5** **EXP. 06/01/61** **\$ 6.00**

Superintendent of Planning, D.C.

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APR 27 1950

(Write in Ink)

APPLICATION FOR CERTIFICATE OF OCCUPANCY
(For Residential Use)

2013 JUL 27 AM 1:42

Date April 10, 1950

David Harvey

Name of applicant

(MUST be same as that given on application for license)

Hereby applies for permission to occupy or operate

Premises No. 1741 Kilbourne Place, N. Y.

Lot 103 Sq. 2602

For use as apartment house

Last used as apartment house

Description of Premises:

Number of stories 3

Constructed of brick

Which floor or floors will be occupied for this use? entire building

Will applicant reside on the premises? on second floor

If license is required, has same been secured? Applied for? yes

License is required for more than two families and/or more than four roomers.

The Certificate of Occupancy issued hereunder does not take effect until the building is under a valid license, nor does it confer the right to make any alterations nor to install any machinery.

Signature of Applicant

David Harvey

By

Mailing Address of Applicant 1741 Kilbourne Place, N. Y.

Name of Real Estate Agent

APPROVED:

F.S. [Signature] Date May 2, 1950

Hldg. Date

Plbz. Date

Licc. Date

TO BE FILLED IN BY CLERK

E.D. No. Height Area

Transcript of No.

E.D. No.

Building Permit No.

Police Survey

(Initials)

1950 - apt

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EXHIBIT C

Form 601 - C79

CERTIFICATE OF OCCUPANCY

No. **A 24108**

Washington, D.C., **December 2**, 19**53**

Permission is hereby granted to
to use the **1st, 2nd & 3rd**
known as premises
purpose(s)

Basin Van Wigfield
(s) of the building located on Lot **2560**
1 Hillhouse Pl., N. W. for the following
Rooming House

**THIS CERTIFICATE SHALL BE POSTED CON-
ABOVE PREMISES AT ALL TIMES.**

"This Certificate of Occupancy need not be reissued
in (1) the type of business, (2) address of business,
or (4) part of the building used for the business. A
change in one or more of the foregoing items
may not be obtained."

CENTRAL PERMIT BUREAU, GOVT.

LOUSLY ON THE

any change
in the business,
location, or any
Certificate of Occu-

USE OF COL

OFFICE COPY

ZONE **2nd U**

SEE **4.00**

Superintendent of Permits, DC

G.

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Form 101-A CFB
Revised 7-1-53

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
ENGINEER DEPARTMENT
CENTRAL PERMIT BUREAU**

APPLICATION FOR CERTIFICATE OF OCCUPANCY—RESIDENTIAL
(WRITE WITH TYPEWRITER OR INK)

USE this form if Certificate is to be issued for Hotel, Flat or Apartment, Rooming, Boarding or Tenement House, Day Nursery, Private Club, Convalescent Home, or Other Residential Use.

To THE DIRECTOR OF INSPECTION:

Date OCT 29, 1953

The applicant(s) requests the issuance of a Certificate of Occupancy for the use of the premises described below, and agrees to comply with all applicable laws and regulations of the District of Columbia, and any terms and conditions appearing on BOTH sides of this application and on any Certificate of Occupancy issued on the basis of this application.

Full Name of Owner(s) of Business

BESSIE MAE WIGFIELD

(See instruction on reverse side)

(PRINT)

(FIRST)

(MIDDLE)

(LAST)

Description of Premises for which Certificate is Requested

Address

1741 Hillmore Pl. NW

Square

(of building to be occupied)

Name and address of agent of building

none - live there

To the best of your knowledge is the building now being condemned?

no

Material of building

Brick

No. of Stories High

3

Basement?

yes

Proposed use

occupy and rent 2 pROOMING HOUSE

Which Floor(s) will be occupied for above use

2nd fl 1st, 2nd, 3rd

Previous use

Rentals

Will applicant reside on the premises?

yes

**READ INSTRUCTIONS AND INFORMATION ON REVERSE SIDE OF THIS APPLICATION
PENALTIES ARE PROVIDED FOR MISREPRESENTATION**

To Be Filled in by Clerk

Use District

Height District

Area District

Transcript of No

E. D. No.

U. Z. A. No.

Bldg. Permit No.

Previous use

No

More or Less Units

Name of Clerk

IF OWNER OF BUSINESS SIGNS:

Signature of Owner

Bessie Mae Wigfield

(in ink)

Home Address

1741 Hillmore Pl. NW

Tel. No.

NO 2749**IF AUTHORIZED AGENT FOR OWNER OF BUSINESS SIGNS:**

Name of Agent

Address of Agent

Tel. No.

Name of Owner(s)
of business

(as shown above)

Signature of Agent
(in ink)**APPROVED:**

☒ F.S.
☐ Bldg.
☐ Plng.
☐ Elec.

RESERVED FOR APPROVALS

Date
Date
Date
Date

APPROVED FOR ISSUANCE OF PERMIT

Date NOV 20 1953

P. 1172

8/14/53

RECEIVED

OCT 29 1953

CENTRAL PERMIT
BUREAU

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D.C. OFFICE OF ZONING**

2013 JUL 27 AM 1:43

Permit No.

Issued

No license

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2013 JUL 27 AM 1:43

EXHIBIT D

Form (19-60)

CERTIFICATE OF OCCUPANCY

No. **55543**Washington, D.C., **01** **3RD** 19**66**Permission is hereby granted to **BESSIE MAE WIDFIELD**to use the **1ST, 2ND & 3RD** floor(s) of the building located on lot **103** Square **2602**known as premises **1741 KILBOURNE PLACE, N.W.** for the followingpurpose(s): **ROOMING HOUSE, LESS THAN 6 ROOMERS**

THIS CERTIFICATE SHALL BE POSTED CONSPICUOUSLY ON THE ABOVE PREMISES AT ALL TIMES. IT IS VALID INDEFINITELY, unless an expiration date is stated, ONLY for the premises, or part thereof, and for the purpose(s), indicated above, and IS NOT TRANSFERABLE to another person or premises under ANY conditions. ANY CHANGE in the type of business, ownership of business, or part of premises used therefor, will render this Certificate VOID and a NEW Certificate must be obtained.

DEPT. OF LICENSES & INSPECTIONS, GOVT. OF DIST. OF COL.

ZONE **R-4** FEE **\$ 12.00**

Chief, Permit Branch



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Formerly 102 A-CFB
Rev. 8/4/57

GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF LICENSES AND INSPECTION
LICENSE AND PERMIT DIVISION
PERMIT BRANCH

Received

B 25 1966

PERMIT BRANCH

APPLICATION FOR CERTIFICATE OF OCCUPANCY—RESIDENTIAL
(WRITE WITH TYPEWRITER OR INK)

USE this form if Certificate is to be issued for Hotel, Flat or Apartment, Rooming, Boarding or Tenement House, Day Nursery, Private Club, Convalescent Home, or Other Residential Use.

To the DIRECTOR OF INSPECTION:

Date

JUL 25TH 1966

The applicant(s) requests the issuance of a Certificate of Occupancy for the use of the premises described below, and agrees to comply with all applicable laws and regulations of the District of Columbia, and any terms and conditions appearing on BOTH sides of this application and on any Certificate of Occupancy issued on the basis of this application.

Full Name of Owner(s) of Business

(See instruction on reverse side)

BESSIE MAE WIGFIELD
(FIRST) (MIDDLE) (LAST)

Description of Premises for which Certificate is Requested

2602

Address

1741 KILBOURNE PL NW Lot 103 Square 2560

Name and address of owner of building

NONE LIVE THERE

To the best of your knowledge is the building now being condemned?

NO

Material of building

BRICK

No. of Stories High

3

Basement?

YES

Proposed use

ROOMING HOUSE

Which Floor(s) will be occupied for above use

1st, 2nd, 3rd

Previous use

Rental

Will applicant reside on the premises?

YES

READ INSTRUCTIONS AND INFORMATION ON REVERSE SIDE OF THIS APPLICATION
PENALTIES ARE PROVIDED FOR MISREPRESENTATION

To Be Filled in by Clerk

Use District

R4

Height District

2-25-16

Area District

T-1

Transcript of No

E D No.

B Z A No.

Bldg Permit No.

Previous to

Name of Clerk

More or Less Units

Name of Clerk

IF OWNER OF BUSINESS SIGNS:

Signature of Owner

(in ink)

Home Address

Tel. No.

IF AUTHORIZED AGENT FOR OWNER OF BUSINESS SIGNS:

Name of Agent

R. RALPH WIGFIELD

Address of Agent

1741 KILBOURNE PL NW

Name of Owner(s)
of Business

BESSIE MAE WIGFIELD

Signature of Agent

R. Ralph Wigfield

(in ink)

APPROVED

RESERVED FOR APPROVALS

F.S.

Bldg.

Plng.

Elec.

Date

Date

Date

Date

APPROVED FOR ISSUANCE OF PERMIT

SEP 30 1966

P-1178

NOTICE TO PROSPECTIVE PURCHASER:

Your application will not be approved and Certificate issued until all inspections have been made and inspection agencies have certified compliance.

Initial

SECRETARY

TREASURER

PRESIDENT

VICE PRESIDENT

Housing Dept. Mike

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EXHIBIT E



District of Columbia Office of Zoning

EXTRACT OF THE DISTRICT OF COLUMBIA ZONING MAP

July 26, 2012



Zoning Layers

- | | | |
|--------------------|--------------|-----------------|
| Zone Districts | CEA | Pending PUDs |
| Historic Districts | Campus Plans | PUDs |
| Overlays Districts | TDRs | Air Rights Zone |

To certify zoning on any property in order to satisfy a legal requirement, contact the Office of Zoning at (202) 727-6311.

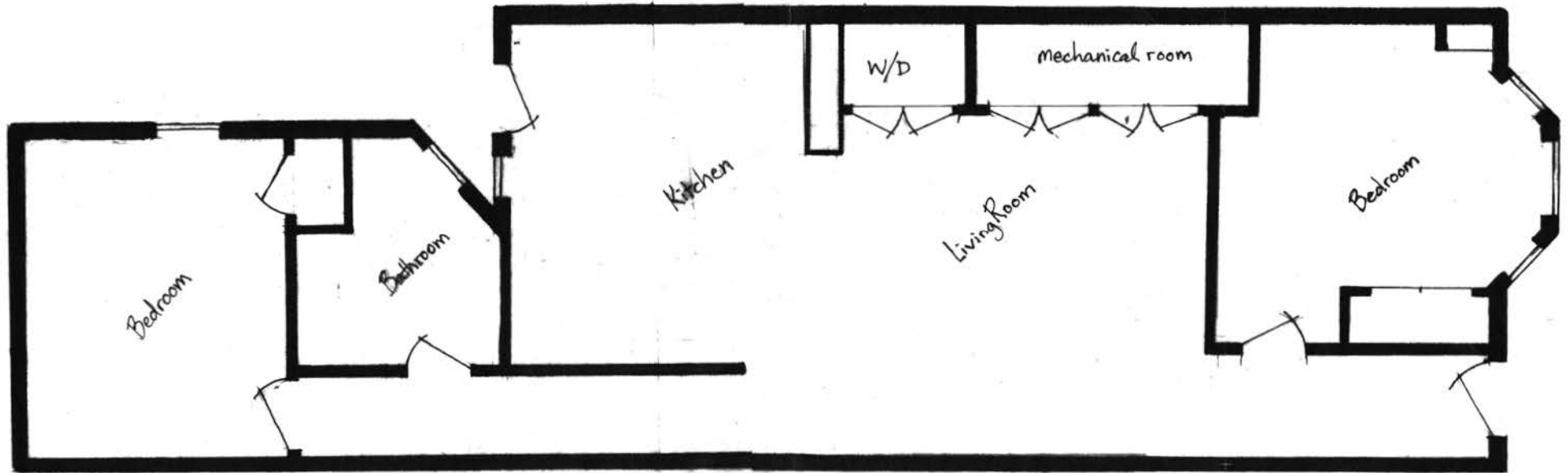
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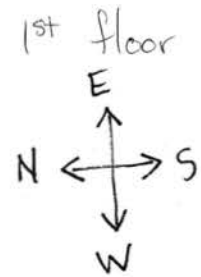
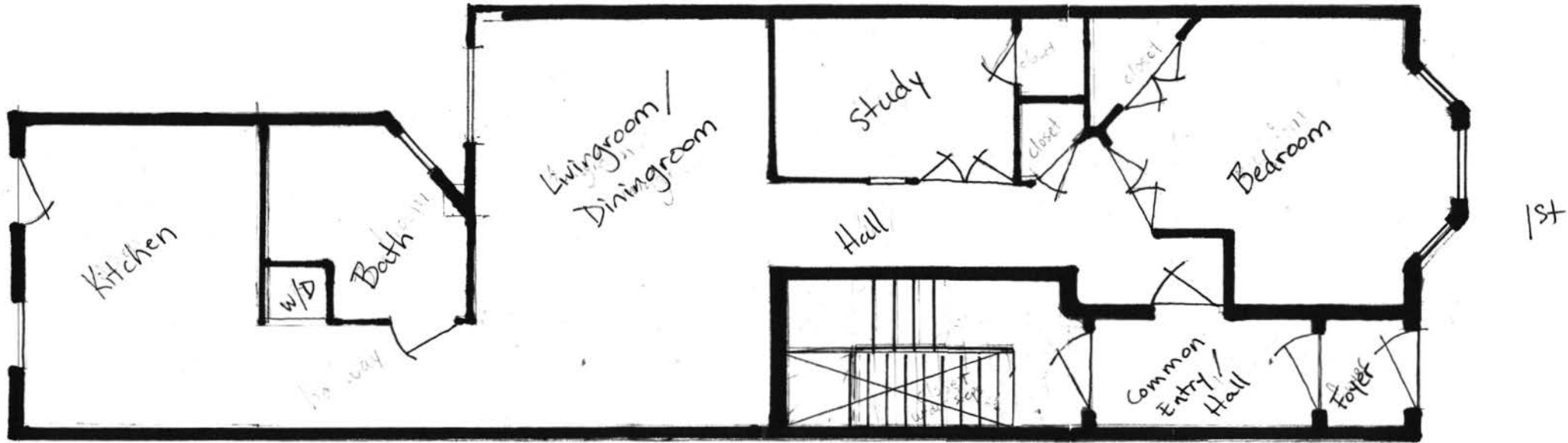
1741 Kilbourne Pl NW Washington DC 20010

Basement



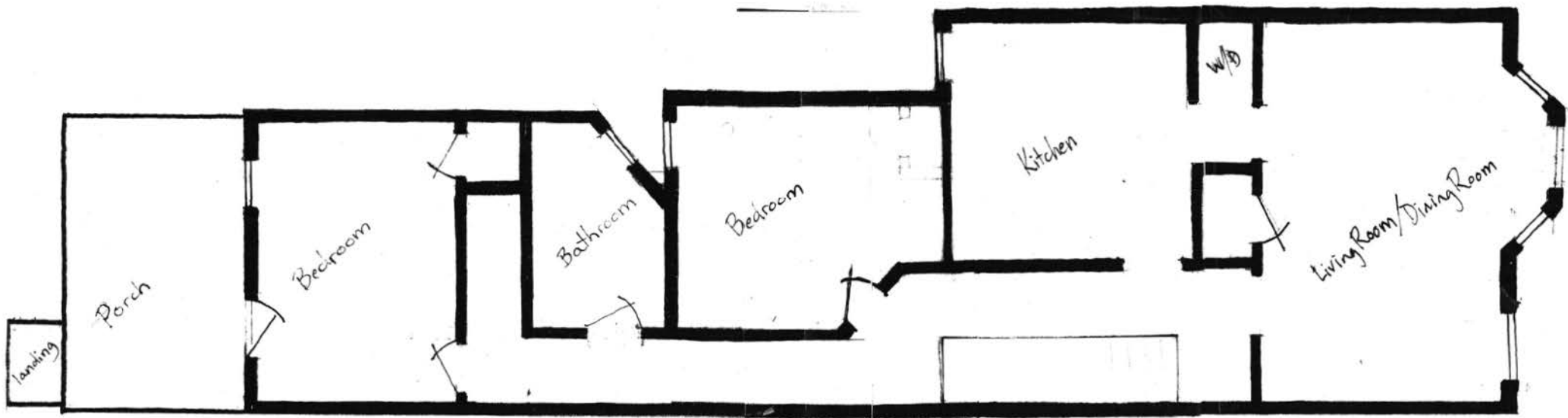
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Washington DC 20010



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1741 Kilbourne Pl NW
Washington DC 20010

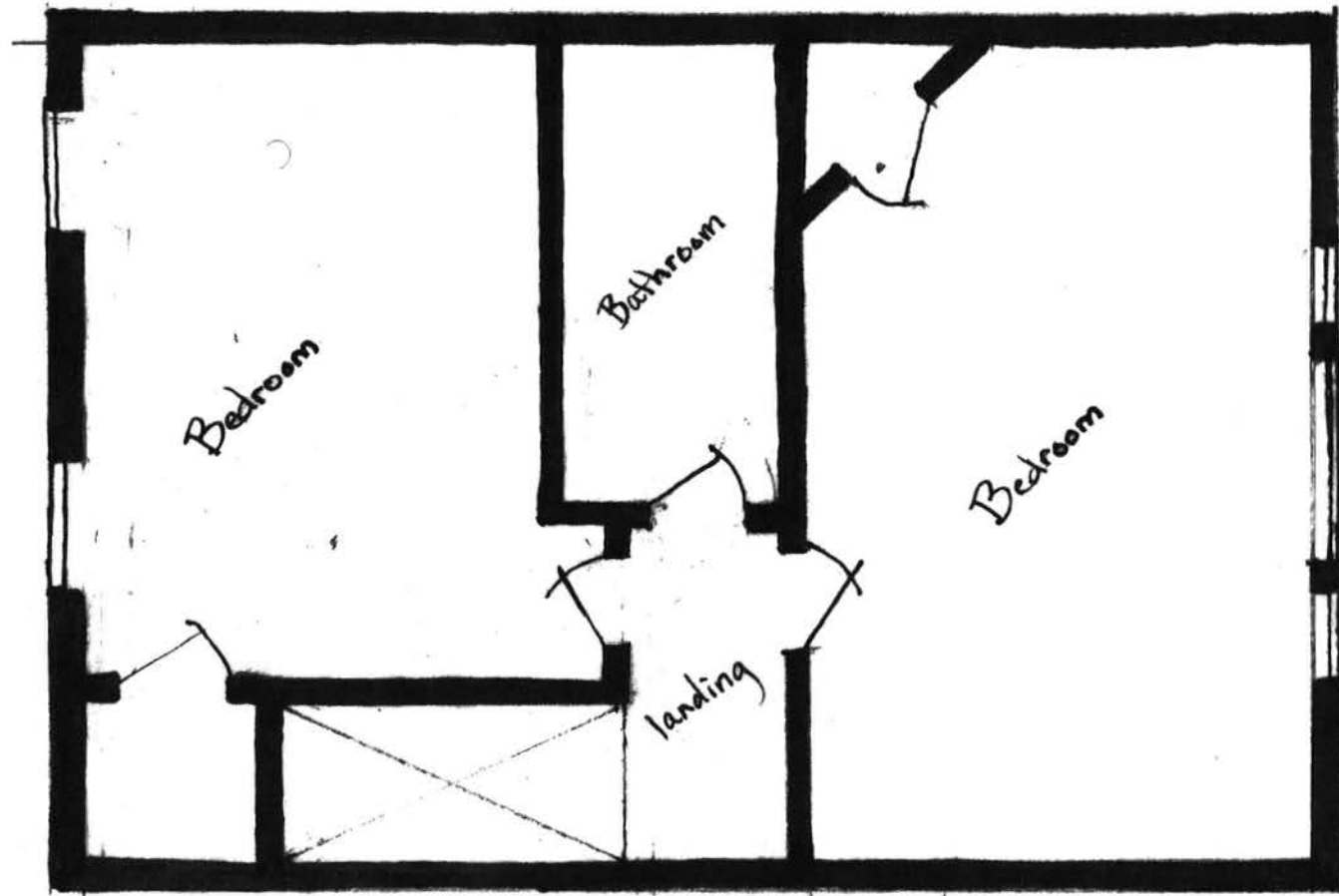


2nd Floor



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1741 Kilbourne Pl NW
Washington DC 20010



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3rd floor
N $\longleftrightarrow$ S

$17' \times 23' = 391'$
Scale =
 $\frac{1}{4} = 1'$