

**STATEMENT IN SUPPORT OF THE APPEAL OF JAMES P. HILL AND EDWARD V. HANLON
TO THE ISSUANCE OF BUILDING PERMIT B1309278**

I. NOTICE AND STANDING:

Applicant Romeu did not comply with the Notice requirements for displaying **BUILDING PERMIT B1309278** ("Permit"):

1. The Permit itself requires that:

**THIS PERMIT MUST ALWAYS BE CONSPICUOUSLY DISPLAYED AT THE ADDRESS OF
WORK UNTIL WORK IS COMPLETED AND APPROVED**

2. Mr. Romeu taped the Permit to a corner window behind a bush, ten feet up in the air, facing an alley. This Permit cannot be seen from the public street in front of his house (T NW), cannot be seen from the sidewalk in front of his house, cannot even be seen when standing on Mr. Romeu's front steps. The attached pictures show that the Permit cannot be seen from the public sidewalk or the public Street. The pictures also show that Mr. Romeu had a large area of easily visible glass in his front window and in the glass of his front door to display the Permit but instead put it 10 feet up in the air behind a bush.

Appellant Hill did not have any notice of even the possibility that a permit had been obtained until August 3, 2013 when he picked up a generic certified letter from Mr. Romeu, dated three days before the permit was actually issued stating that Mr. Romeu was in the process of submitting a "building permit application to renovate my building." No plans, no description of the proposed renovation were included with the form letter. By letter dated August 13, 2013 Mr. Romeu first apprised Mr. Hill of his intent to construct a very large deck (which will have a carport or garage underneath it and will extend to the very edge of the property line effectively extinguishing Mr. Hill's embedded right of way/private easement to use the last three feet of Mr. Romeu's lot.

Appellant Hanlon had no notice whatsoever of the Permit until Thursday morning, September 26, 2013 when two workman showed up in Mr. Romeu's rear yard and began digging up the pre-existing ground level concrete patio with picks and shovels.

3. Further, Mr. Romeu's attached Deed shows that lots 93, 96 and 97 have an embedded easement in Mr. Romeu's Deed. Mr. Romeu's Deed states that it is

SUBJECT TO a right of way over the rear 3 feet by the full width of lot, the same to be used for alley purposes for the benefit of Lots 93, 96 and 97 in said Square 191.

Mr. Romeu gave no notice whatsoever to the owners of lots 93 and 96 that their private rights of way were to be effectively extinguished by the construction pursuant to this Permit and that they would no longer have any effective access to their rear yards at the completion of construction.

4. None of the Plats or diagrams submitted with the Permit application show this embedded private right of way and should have.
5. This right of way is the **only** access to the rear yards of these three lots, Mr. Hill's lot (lot 97) and lots 93 and 96. The architectural diagrams submitted by Mr. Romeu with the permit application show the 12" wide conical uprights supporting this massive deck are to be inserted into the middle of the right of way, cutting the right of way width from 3 feet down to about 18 inches (cutting the right of way in half). But, further the permit application shows that a sliding metal gate is to be inserted into the right of way cutting the passage way a further 3 to 6 inches, reducing the width of the easement to somewhere between 12 and 15 inches wide, effectively extinguishing the easement. Therefore, this structure will effectively extinguish the right of way for lots 96, 97 (Mr. Hill) and 93. An average adult will no longer be able to walk thru this truncated right of way (not even sideward). No one who has to use cane, a walker, push a baby carriage, carry their trash out to the curb on collection day, carry their groceries home, or persons with disabilities will have access to their rear yards from the public alley. This effective extinguishing of the rights of way of three other lot owners, seriously diminishes the use of the rear yards of lots 96 and 97 and reduces the market value of the houses on lots 96, 97 and 93. The trash cans for lots 93, 96 and 97 will have to be kept in the public parking in front of each of these houses causing a significant eyesore in this historic bloc, reducing the market value and market attractiveness of each of these three lots.
6. In addition to reducing the width of the easement to as little as 12 inches the deck is being constructed over the easement and will completely cover the easement. The floor of the deck will be 7.5 feet above grade according to the permit file. The deck flooring will be a minimum of 2 inches thick and will be supported by 2 x10 joists according to the permit file. The maximum height of the presently open to the sky, uncovered easement will be capped at 6.5 feet or less. That is, the maximum headroom will be 6.5 feet (or less depending on variations in the grade). A 6 foot 3 inch man wearing shoes will not be able to walk thru the easement without bowing his head. A Sikh or religious Jew over 6 feet wearing a head covering will not be able to access the rear yards of lots 93, 96 and 97 without bowing his head. This covering over of the easement reduces the usability of Lots 93, 96 and 96, as well as, the value of these three lots.
7. Appellant Hanlon's lot is approximately catty-corner to Mr. Romeu's lot across the public alley that runs between T Street NW and Swann Street NW in the 1500 block. Mr. Hanlon will be able to see this ugly behemoth deck/carport/garage structure with its towering walls from his driveway, from his back steps, from at least 6 windows of his house. This behemoth structure will be out of scale, fill in the open space of a very livable alleyway helping to give it an ugly, industrial, canyon feeling, diminishing the

value of Mr. Hanlon's property and diminishing Mr. Hanlon's enjoyment of his own property. What is being constructed pursuant to the Permit will appear from Mr. Hanlon's property, as a nearly 15 foot high ugly box. The permit file further indicates that tall light poles will extend upward into the air above the deck and have "speakers" atop each of these light poles. The tall light poles and the noise from these speakers which appear will be at least 16 feet high above grade will seriously diminish Mr. Hanlon's ability to enjoy his own rear yard.

II. ZONING ERRORS IN THE ISSUANCE OF BUILDING PERMIT B1309278

1. 11 DCMR 403.2 The issuance of the Permit violates 11 DCMR 403.2 (LOT OCCUPANCY)

As part of the permit application Mr. Romeu's architect has calculated that Mr. Romeu's **current lot occupancy is 71%.** Mr. Romeu's architect has further submitted with the permit application calculations showing that after construction of this rear deck/carport/garage that Mr. Romeu's **lot occupancy will rise to 92%.**

Mr. Romeu's lot is zoned DC/R-4. Under 11 DCMR 403.2 the maximum lot occupancy allowed as a matter of right for this two family flat is 60%.

2. 11 DCMR 223 ZONING RELIEF ... (Special Exception) Does Not Apply

Mr. Romeu does not qualify for relief under Section 223 because 223.3 states that to be granted relief by way of a Special Exception

"The lot occupancy of all new and existing structures on the lot shall not exceed fifty percent (50%) in the R-1 and R-2 Districts or seventy percent (70%) in the R-3, R-4, and R-5 Districts."

Mr. Romeu himself in his permit application states his current lot occupancy is **71%** and would rise to **92%** when construction is finished. Accordingly, relief cannot be granted under Section 223.

It should also be pointed out that there is no way that this proposed structure under this Permit could ever meet the test of Section 223.2 which states "The addition or accessory structure shall not have a substantially adverse affect on the use or enjoyment of any abutting or adjacent dwelling or property ..." This is so, because Mr. Romeu proposes to **effectively extinguish the private right of way easements of three other lot owners cutting off access by these owners to their own rear yards from the public alley.** Mr. Hill, as well as, the owners of Lots 96 and 93 would further suffer significant diminution of light and to their rear yards. Mr. Hill would also suffer significant loss of privacy, use and

enjoyment of his own rear yard from this huge overlooking lighted deck being constructed at the property line of Lots 97 and 98.

3. **11 DCMR 3103.2 - VARIANCES: Variance Relief Is Not Applicable**

Mr. Romeu cannot meet the three tests for a variance set out in the regulations:

“[w]here, by reason of **exceptional** narrowness, shallowness or shape of a specific piece of property at the time of the original adoption of the regulations, or by reason of **exceptional** topographical conditions or other **extraordinary or exceptional situation** or condition of a specific piece of property, the strict application of any regulation adopted under D.C. Code §6-641.01 to 6-651.02 would result in **peculiar and exceptional** practical difficulties to or **exceptional and undue hardship** upon the owner of the property, to authorize, upon an appeal relating to the property, a variance from the strict application so as to relieve the difficulties or hardship; **Provided, that** the relief can be granted without substantial detriment to the public good and without substantially impairing the **intent, purpose, and integrity of the zone plan** as embodied in the Zoning Regulations and Map.” (Emphasis added)

Mr. Romeu seeks to extinguish the easements embedded in his Deed for lot owners 93, 96 and 97. Doing so, Mr. Romeu extinguishes, therefore, the only access three other lot owners have to their own rear yards, substantially impairing light to these rear yards, effectively requiring the owners of lots 96 and 97 to keep their trash permanently in the public parking in front of their homes. This is detrimental to the public good, will create an ugly eyesore, will reduce the ability of the owners of lots 96 and 97 to have gardens in front of their homes and will increase the area's rat problem.

4. **11 DCMR 2001.3 Nonconforming Structures Devoted To Conforming Uses: The issuance of the Permit violates 11 DCMR 2001.3**

Mr. Romeu's house is a nonconforming structure with respect to lot occupancy (71%), and rear yard size (14.728 feet). 11 DCMR 2001.3 states:

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.

Mr. Romeu's current lot occupancy is already 71% according to his own architect who submitted the calculations as part of the permit application. Thus, Mr. Romeu's structure does not conform to "percentage of lot occupancy requirements." The addition of this behemoth deck/carport/garage will increase and extend the nonconforming aspect of the existing structure in violation of 11 DCMR 2001.3(b)(2).

Further, according to the architectural diagrams submitted with the permit application, Mr. Romeu has a nonconforming rear yard of **14.728 feet** which is either to be totally eliminated or reduced to a few inches when the structure is completed.

11 DCMR 404. REAR YARDS states

404.1 **A rear yard shall be provided for each structure** located in a Residence District, the minimum depth of which shall be as set forth in the following table ..." (Emphasis added)

Sec. 404.1 states that in an R-4 District the "MINIMUM DEPTH OF REAR YARD ... [is] ... 20 feet." Mr. Romeu seeks to increase the existing nonconformity of his rear yard from 14.728 feet to a few inches in violation of 11 DCMR 2001.3.

5. **11 DCMR 2001.6 Nonconforming Structures Devoted To Conforming Uses Does Not Apply**

There was no deck on the rear of Mr. Romeu's house when he bought his house. An old deck had been torn down by a previous owner long before Mr. Romeu bought the house and a new concrete patio had been built by the previous owner at grade level covering almost the entire rear yard. No act of God or casualty event occurred - rather a previous owner removed an old deck and built in its place a ground level patio - the same patio was there when Mr. Romeu purchased his house and was still there when Mr. Romeu applied for this Permit. There is no deck for Mr. Romeu to reconstruct and 11 DCMR 2001.6 is inapplicable.

2001.6 If a casualty or act of God results in damage to an extent of seventy-five percent (75%) or less of the cost of reconstructing the entire structure, the structure may be restored or reconstructed to its previous condition or to a more conforming condition; provided, that the reconstruction or restoration shall be started within twenty-four (24) months of the date of the destruction and continued diligently to completion. (Emphasis added)