

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

**APPLICATION OF RAFAEL ROMEU
AND LARISSA LEONY
1536 T STREET, NW**

**BZA APPLICATION NO. 18725
HEARING DATE: FEB. 11, 2014
ANC 2B**

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APPLICANT'S PREHEARING STATEMENT

**I.
NATURE OF RELIEF SOUGHT**

Rafael Romeu and his wife Larissa Leony (the "Applicants") own and reside in the property located at 1536 T Street, NW (the "Property"), located in the R-4 zone district. They purchased the Property in September, 2012. The Property consists of a row dwelling with an English basement (the "House"). In February, 2013, the Applicants' architect first received confirmation from the Zoning Division of DCRA that a proposed rear deck on the Property would be permitted as a matter-of-right. In July, 2013, the Applicants received a building permit (the "Building Permit") to construct a rear deck. The Zoning Division of DCRA approved the Building Permit application based on their conclusion that a rear deck had existed in the same footprint from some time prior to 1958 until approximately 2011. In good-faith reliance on the initial zoning approval and the issuance of the Building Permit, the Applicants proceeded to engage an architect for the design of the deck and to enter into a contract with a contractor to build the deck. The Applicants also purchased the materials for the deck and began construction of the deck. The Building Permit was appealed by Mr. James Hill (1538 T St) and Mr. Edward Hanlon (1523 Swann St) on October 2, 2013 (the "Appeal"), after which point the Applicants

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ceased construction of the deck pending resolution of its zoning rights in regard to the proposed deck

In November, 2013, the Zoning Administrator issued a notice to revoke the Building Permit for the deck and the Appeal was made moot. The Applicants then filed this Application. The Applicants wish to build the deck as originally approved in the Building Permit, with minor changes, and for this the Applicant is requesting area variance relief from the lot occupancy requirements of §403.1, the rear yard requirements of §404.1, and the §2001.3(a) restriction against additions to properties that exceed the maximum permitted lot occupancy.

II. JURISDICTION OF THE BOARD

The Board of Zoning Adjustment (“BZA” or “Board”) has jurisdiction to grant the variance relief requested herein pursuant to D.C. Code § 6-411.07 (2001 ed.) and 11 DCMR § 3103.2.

III. BACKGROUND

A. Description of the Property

The Property is located at 1536 T Street, NW, Lot 98 in Square 191, in the Dupont Circle neighborhood; in the Greater U Street Historic District and the Sixteenth Street Historic District. The Property is a rectangular lot with a land area of 921 square feet. It is 16.83 feet wide by 54.73 feet long. The Property is bounded by T Street to the north, 1538 T Street to the west, a public alley to the east, and a 16th Street property, and that property’s garage, to the south. The Property is the fourth lot in from 16th Street. (See maps attached as Exhibit A.)

According to the deed for the Property (attached as Exhibit B), there is an easement “for alley purposes” for the rear three feet of the Property, for the benefit of Lot 97 (1538 T St), Lot 96 (1540 T St), and Lot 93 (1837 16th St)

The Property is improved with a 3-story row dwelling with a below-grade (cellar) level, built around 1900 (the “Building”) The Property currently has a lot occupancy percentage of about 72% The Building includes an English basement with the entrance in the front of the Building on T Street Internally, the Building is a flat, with the Applicant’s dwelling on the three above-grade floors, and an English basement located on the cellar level at the front two-thirds of the Building The rear third of the cellar level consists of a utility room with the only access thereto being from the rear yard – access to which is a couple steps below grade at the rear of the Property

The rear yard for the Property is approximately 14 73 feet long by 16 83 feet wide (the “Rear Yard”). The Rear Yard abuts a garage which is located on a 16th street lot that is perpendicular to the Property This garage abuts the Applicant’s Rear Yard for about half of the Property’s width The other half of the Rear Yard abuts open space (still part of the 16th St lot) adjacent to the north-south alley to the east Where the garage abuts the Property, the garage encroaches onto the Property by approximately eight (8) inches Therefore, as a result of both the easement and the encroachment, the Applicants are restricted in their use of about 3 7 feet (or 25%) of the 14 73 feet Rear Yard The Rear Yard, except for the easement area, is currently enclosed by a six-foot high wood privacy fence

There is currently no access from the Applicant’s living space to the Rear Yard From at least 1951 until 2011, the Building had a rear deck at the main level of the Building which

occupied the entire Rear Yard, but for the garage encroachment (the “Previous Deck”)¹ The Previous Deck (or decks) therefore, served not only as the property owner’s exterior main level living space, but also as the only access to the rear of the Property In addition, it appears from an aerial photograph and from permit plans from the previous owner in 2010, that the space underneath the Previous Deck was historically used as a parking space

B Description of the Surrounding Area

The Property is one of six small lots in the northeast corner of Square 191 The rest of the lots in Square 191 have approximate land areas between 1,344 and 3,500 square feet The majority of lots on the north side of the square have a land area of 1,779 square feet, almost twice the size of the Property. A copy of the Zoning Map and other maps of the surrounding area are attached as Exhibit A. Abutting the Property to the east is a 10-foot wide north south alley, which the Applicants intend to use for access to a parking space underneath the proposed deck Across the alley to the east is 1534 T Street, followed by a series of row dwellings A comparison of these properties with the Applicant’s Property demonstrates that the footprints of these row dwellings are roughly equal to or greater than the Applicant’s entire lot.

To the west of the Property is 1538 T Street, owned by Mr James Hill, a co-appellant in the BZA appeal ² Mr Hill’s property is similar to the Applicant’s, and his property consists of a

¹ It is not known whether the Previous Deck existed continuously since 1951 or if it was replaced at some time or times The Applicant was unable to discover any permit history for the Previous Deck or decks The Applicant has obtained aerial photographs from 1951, 1999, 2002, 2005, 2008, and the current Property Quest photo from 2010, all showing the deck (see Exhibit C) In addition, the previous owner’s permit plans noted the existing of the 100% deck and a parking pad underneath it It was the Zoning Division’s interpretation that the evidence submitted was sufficient to permit construction of the Applicant’s new deck

² The other co-appellant in the BZA appeal, Mr Edward Hanlon, lives at 1523 Swann Street Mr Hanlon’s house is approximately 100 feet from the proposed deck, at the opposite end of the alley, and he does not use the easement, so it is not clear what concern he has with the proposed deck or the easement, as it has no effect on him or his property (see photo attached showing view from the proposed deck to Mr Hanlon’s house, attached as Exhibit D)

building occupying about 70% of its lot, with a small rear deck and stairway to his exterior patio space Mr Hill's main living space (including kitchen) is at the cellar/basement level, in contrast to the Applicants, whose main living level is on the first floor Of the other four small lots in the small six-lot group in the northwest corner of Square 191, the respective lot occupancy percentages are approximately 85% (Lot 96), 90% (Lot 94), 95% (Lot 93), and 100% (Lot 95)

To the east of the Property, across the alley (1534 T St), is a row dwelling with a deck and a parking space. The owner of 1534 T has written a letter in support of the Application (attached as Exhibit E)

C Description of the Project and the Zoning Process.

1 The Previous Deck and Preliminary Approval

In October, 2012, the Applicants, having just purchased a home with no access to its Rear Yard from inside the house, commenced an inquiry into whether or not the construction of a rear deck would be supported by neighbors and permitted by the City The Applicants did not wish to spend resources or time on building a deck until it was certain that the deck would be permitted To that end, the Applicant Rafael Romeu first discussed the deck proposal with his next-door neighbor, Mr Hill, on October 1, 2012. Mr Hill said he had no objection to the deck and in fact expressed a willingness to contribute to the cost of a gate where the 3-foot easement meets the alley, to allay security concerns of people wandering into his yard through the easement path

On November 6, 2012, the Applicant hired architect Bill Morris to perform a "zoning analysis" and to inquire of the City whether or not the proposed deck would be permitted No deck design or plans were to be started unless and until the Applicant received solid assurances from the City that the deck was permitted under the Zoning Regulations

On November 12, 2012, while the Applicant was repairing roof damage from Sandy storm damage, the Applicant again had a conversation with Hill, in which Hill asked for a recommendation for a roofer and again mentioned his desire to have a gate closing off the easement for security reasons. The Applicant also discussed the deck plans with Mr. Afkhami, the owner of 1540 T Street, two houses to the west of the Property, who expressed support for the project.

Over the next couple months, the architect made inquiries of zoning staff at DCRA regarding the proposed deck and researched permit records for the Property. The zoning technician informed Mr. Morris that if it was shown that a deck existed previously on the property, a new deck might be permitted. Mr. Morris found permit plans from a previous owner for the removal of the deck and parking pad in 2010 (See documents attached as Exhibit F, regarding this engagement).

On February 13, 2013, the zoning technician informed Mr. Morris that he could safely proceed with the plans for the new deck, based on the evidence of a recently pre-existing deck.

Mr. Morris summarized his zoning due diligence activities and result in a letter to the Applicants dated February 23, 2013 (attached as Exhibit G). The Letter notes that Jeannette Anderson, the zoning technician, “notified us that if evidence could be obtained showing a previously existing rear deck, it might be possible to proceed with plans for a new rear deck. We researched DC Archives and retrieved the permit application documents from a building permit application from 2010. These drawings indicated demolition of an existing rear deck. We forwarded the relevant drawings to Ms. Anderson for her review. Ms. Anderson replied that we could indeed proceed with a permit application for a rear deck based on this evidence.”

The 2010 permit plans on which Ms Anderson relied were for the demolition of the rear deck by the previous Property owner. A plan page is attached as Exhibit H. This exhibit shows (i) the existence of a deck covering the entire rear yard, as of April, 2010, on the portion of the plan titled "Demolition Plan – First Floor" and (ii) the existence of a parking space under the deck by the notation "REMOVE CONCRETE SLAB PARKING PAD" on the portion of the plan labeled "Demolition Plan – Basement".

In addition to this proof that the Previous Deck existed in 2010, aerial photographs from different time periods show the deck in existence and taking up 100% of the available Rear Yard, including the easement area. The photographs in Exhibit C are aerial photographs from 1999, 2002, 2005, and 2008. Also included is a photograph printed from D C Property Quest website, which clearly shows the rear deck in 2010 taking up the entire Rear Yard. The information for Property Quest comes directly from the District's GIS program, so DCRA likely used this information in its investigation of whether or not there was previously a rear deck on the Property.

In addition to the permit plan and the photographs, the Applicants have received a letter from the previous owner confirming the Previous Deck's existence and its removal in 2011 for safety reasons (letter attached as Exhibit I).

2 Actions in Good Faith Reliance on the Preliminary Approval

Based on the assurances from the zoning technician to the Applicant's architect in February, 2013, the Applicants signed a second contract with the architect to design the deck and prepare permit plans and a permit application. The Applicant has paid a total of \$11,000 for such services (see invoices attached as Exhibit J). On April 1, 2013, the Applicant had yet another conversation with Mr Hill, in which Mr Hill yet again expressed support for the project,

particularly putting a gate on the easement, complaining that people wander in from the alley to his property while he is grilling Mr Hill actually offers to help pay for the gate, as he sees himself as benefitting from this

3 The Deck is Approved by Zoning and Building Permit Issued

On July 23, 2013, the Applicant sent the 10-day notification form to Mr Hill, telling him that the plans are available for review at his request

On July 26, 2013, DCRA issues Building Permit No B1309278 to “Construct rear deck addition” at 1536 T Street, NW (see Exhibit K)

On August 13, 2013, the Applicant delivered a full set of plans for the deck to Mr Hill, in response to Mr Hill’s request On August 23, 2013, the Applicant and Mr Hill had another conversation, and Mr Hill again does not object

In September, 2013, the Applicant entered into a contract with the contractor to build the deck The contractor’s retainer was deposited into the bank on September 23, 2013. On September 26, a second check was deposited by the contractor and deck materials are ordered The contractor commenced work in September, demolishing the existing patio, preparing the Rear Yard for the deck and parking pad, digging several foundation footers, and contracting with third-party inspectors (A copy of that contract, and evidence of payments, is attached as Exhibit L)

On September 29, 2013, more than two months after the permit was issued, Mr Hill knocked on the Applicants’ front door at 10 p.m on a Sunday night (Mr Romeu was not at home) and handed Ms Leony a “cease and desist” letter and repeatedly asserted that “you’re in trouble” and “your permit is not legal.” The only concern mentioned in the “cease and desist” letter relates to the easement A copy of that letter is attached hereto as Exhibit M.

On October 2, 2013, Mr. Romeu first learns of the appeal filed by Mr Hill and Mr Hanlon when he received a copy of the appeal via e-mail from Mr Hanlon This was sixty-eight (68) days after the Building Permit was issued, after construction on the deck had commenced

On October 3, 2013, the Applicant hired and consulted with legal zoning counsel for the first time In discussions between the Applicants' zoning counsel and the Zoning Administrator, the Zoning Administrator told the Applicant that if the Applicant could produce a building permit from prior to 1958 for the deck, that he would defend the appeal, and if he could not, he would revoke the permit that he had duly issued several months earlier. In the end, the Applicant's consultants could not locate such a permit, and the Zoning Administrator issued a Notice to Revoke Permit on December 6, 2013 (copy attached as Exhibit N) At this point, the Applicants filed this Application, with the hope of saving its investment in the deck, gaining the exterior living space it had expected from the actions of zoning officials, and gaining access to the rear of its property, the use of the rear deck, and the provision of a parking space, similar to what previous owners of the Property had enjoyed

4 Actions in Good Faith Reliance on the Building Permit

After the Building Permit was issued, and in reliance on that permit, the Applicant entered into a contract with the contractor, and paid the contractor \$ 32,500 in payment of that contract, an amount which included not only non-refundable deposit monies for the contractors services, but significant sums for the custom order and purchase of Brazilian IPE wood to be used for the deck As a direct result of both the assurances received from the zoning technician, as well as the issuance of the Building Permit, the Applicants expended considerable assets toward construction of the deck These assets are not recoverable if the deck cannot be built Attached as Exhibit O is a letter from the Applicants' contractor explaining why the purchased

wood cannot be returned to the distributor, and finding another purchaser for the wood will be difficult and any sale would surely be at a significant loss

In addition to the purchase of the materials, the Applicant began construction on the deck, including the demolition of the rear patio, removal of earth and patio stones, the digging several foundation footings and earth removal, and the contracting of third-party inspectors. The Applicants suspended work on the deck when notice of the Appeal was received, and has been working with counsel first to understand how the City can revoke an unequivocal approval given four months earlier, and what options the Applicant had for defending the appeal, fighting the revocation, or requesting a variance. The Applicant decided that requesting a variance was the best course of action, and the Applicant continued to attempt to communicate with Mr. Hill to hear his concerns and try to mitigate them. But Mr. Hill, once the appeal was filed, refused to communicate with the Applicant, despite his closing in his cease and desist letter stating that he was “available at a mutually agreeable date and time to discuss this matter further.” Mr. Hill also refused several opportunities to have the ANC Commissioner mediate between him and the Applicant.

The Applicants’ first inkling that the neighbor had an issue with the proposed deck was when Mr. Hill showed up at the Applicants’ house at 10 pm on Sunday night, September 29, 2013, over 2 months after the permit was issued. At that time, the Applicant understood from the letter that the easement was Mr. Hill’s only concern.

5 The Easement

The easement which burdens the rear three feet of both Mr. Hill’s and the Applicants’ properties was granted to each respective property, and to two other property owners west of 1538 T Street, to use such area for “alley purposes” (hereinafter, the “Easement”). The

Easement has existed since at least 1950, but presumably since the properties were developed together around 1900. The Easement is not an “ingress/egress” easement or an emergency access easement, and it has generally been used only by Mr. Hill to take out trash to the alley.³

But regardless of the purpose and customary use of the Easement, Mr. Hill and any other lawful user of the Easement need not be concerned, as the proposed deck will have no effect on the Easement. The 3-foot wide Easement will remain completely open and accessible, and will have a height clearance of over 7 feet in the area under the Applicant’s deck. In fact, since the solid privacy fence bordering the easement will be removed, the width of the area around the Easement will actually be greater than it is currently. Instead of the privacy fence, deck columns located north of the easement area will serve as a subtle but effective demarcation between the easement area and the parking space. The deck being over the Easement area is a situation that existed previously, from the evidence regarding the Previous Deck.

As of September 29, 2013, Mr. Hill’s complaints about the deck involved only the Easement and a few immaterial items dealing with posting of a permit or general assertions of building code error. In response to this letter, the Applicant revised his plans to remove the gate that Mr. Hill apparently now has an issue with.

The Applicant has included several illustrations in this Statement (included with the Plans and Renderings attached as Exhibit S) showing how the Applicant complies with the Easement. The Applicant is also prepared to discuss the Easement at the hearing, however, in the past the

³ The photo attached as Exhibit P shows that Mr. Hill has kept his own easement area completely obstructed by trash cans and a large potted plant. This suggests that his easement area is not used by or relied on by anybody to Mr. Hill’s west. Other photos in this exhibit show that the 16th Street property no longer has access to the easement.

Board has ruled on several occasions that private easements are not zoning issues and are therefore not within the Board's jurisdiction ⁴

IV. THE APPLICANT MEETS THE TEST FOR VARIANCE RELIEF UNDER THE ZONING REGULATIONS

The burden of proof for an area variance is well established. The Applicant must demonstrate three elements: (1) unique physical aspect or other extraordinary or exceptional situation or condition of the property, (2) resulting in practical difficulty in complying with a strict application of the Zoning Regulations, and (3) no harm to the public good or the zone plan. *Gilmartin v D C Board of Zoning Adjustment*, 579 A 2d 1164, 1167 (D C 1990). As set forth below, the Applicant meets the three-part test for the requested area variance.

A The Property is Subject to Exceptional Conditions and Situations

In order to prove an extraordinary or exceptional condition, or uniqueness, the Applicant must show that the property has a peculiar physical aspect or other extraordinary situation or condition. *Monaco v D C Board of Zoning Adjustment*, 407 A 2d 1091, 1096 (D C. 1979). A property's uniqueness is not limited to physical aspects of the land and may be determined by "some difficulty not shared by the entire neighborhood." *Id.* at 1098.

The Court of Appeals held in *Clerics of St Viator v D C Bd of Zoning Adjustment*, 320 A 2d 291 (D C 1974) that the exceptional situation or condition standard goes to the property, not just the land, and that "property generally includes the permanent structures existing on the land." *Id.* at 293-94. The Court held that the exceptional situation standard of the variance test

⁴ In BZA Case No 14491, the BZA noted that private easements were not zoning issues and were therefore outside the Board's jurisdiction.

may be met where the required hardship is inherent in the improvements on the land (i.e., the building or structure) and not just the land itself

Furthermore, the Court of Appeals held in *Gilmartin v D C Board of Zoning Adjustment*, 579 A 2d 1164, 1167 (D C 1990), that it is not necessary that the exceptional situation or condition arise from a single situation or condition of the property. Rather, it may arise from a “confluence of factors.”

In *Monaco v D C Board of Zoning Adjustment*, the Court of Appeals held that the zoning history of a property could be considered in making the determination of uniqueness.

BZA Order No. 17264 followed the Monaco ruling, and was supported by the Office of Planning and approved by the BZA. Case No. 17264 was strikingly similar to this Application, except for a few differences which make this Application a much stronger case than No. 17264. In the present case, the Applicant is replacing a deck which had been in this same footprint for 60 years. In Case No. 17264, the applicant constructed its deck without a permit and then subsequently got a permit (that claimed interior renovations only) which was later revoked.

In contrast to the zoning history in Case No. 17264, this Applicant has done everything by the book, from first hiring an architect to investigate the regulatory feasibility of the deck, obtaining preliminary approval from zoning staff at DCRA, and then not taking a step toward construction of the deck until it was 100% sure it had the right to do it. The entire process, from commencing the zoning due diligence process in November, 2012, to receipt of the Building Permit in July, 2013, was a deliberative and transparent process which involved neighbors, architects, and DCRA zoning personnel. In contrast to the applicant in #17264, in the present case there has been no deception, no misleading representations, and no action taken until all approvals were secured. And the approval by the Zoning Division was not a mere oversight, or

an error by the intake desk. The actions of the Zoning Division in approving the Applicant's proposed deck were reasonably based on the existence of the Previous Deck. But the most critical point for consideration by this Board is that the Applicant, after months of careful due diligence, had no reason to suspect that the Building Permit would be revoked. The Applicant therefore relied in good faith on that Building Permit when it expended considerable resources in furtherance of such approval.

Among the Property's extraordinary situations and conditions are

1) The Zoning Process – The Zoning Process, as detailed above, including the diligence of the Applicant in seeking an approval, the issuance of that approval, and the actions then taken by the Applicant in reliance of those approvals, represent an extraordinary situation with the Property.

2) Small Lot Size – The Property is one of six small lots in the northeast corner of Square 191. The rest of the lots in Square 191 have approximate land areas between 1,344 and 3,500 square feet. The majority of lots on the north side of the square have a land area of 1,779 square feet, almost twice the size of the Property.

3) No Rear Alley – The Property abuts a 16th Street lot, which is perpendicular to the Property. The 16th Street lot includes a garage which encroaches 8 inches onto the Property. Because of the perpendicular lot and the encroachment, the Applicants' exterior space and view is limited.

4) End Unit – the Property borders a north-south alley to the east. Hence, there is no privacy or security buffer for lot 98, whereas Lot 97 (1538 T St), Lot 96 (1540 T St), and Lot 93 (1837 16th St), all are to the west of 1536 T St. Hence, lot 98 serves as a buffer, providing security from crimes and thefts occurring in the alley, and provides privacy, safety, and security.

from the alley For example, a child playing in any of the other lots cannot wander into the alley without passing through lot 98, whereas the alley abuts lot 98, without a deck, a child would wander into the considerable automobile traffic going through the alley throughout the day Hence, without the deck, the yard becomes unsafe for children, exposed to the alley, and lacking all privacy and security

5) Internal Configuration of the Building – Because of the internal configuration of the Building, the Applicants have no access from the inside of their living space to the Rear Yard. Previous owners enjoyed the Previous Deck, which both provided exterior living space on the main level, privacy and security to the owners and the abutting properties, and provided a roof for a parking space under that deck

6) Deck Existed Here Since at Least 1951 until 2011 – Based on the letter from the previous owner, the aerial photographs, and the DCRA permit plans from 2010, the Property had a deck in a footprint identical to what the Applicant is now requesting If it was not for this evidence of the Previous Deck, the Applicant would have never received assurances from the zoning staff at DCRA and would never have moved forward with their plans to build the proposed deck

7) The Easement – The 3-foot easement at the rear of the Property restricts the Applicant's use of the ground floor of the Property, as evidenced by the current fencing that rests more than 3 feet inside the rear property line

8) The Garage Encroachment – The 8 inch encroachment from the garage on the abutting property to the south further restricts the use of the rear of the Applicant's Property

B Strict Application of the Zoning Regulations would Result in a Practical Difficulty.

The second prong of the variance test is whether a strict application of the Zoning Regulations would result in a practical difficulty. In reviewing the standard for practical difficulty, the Court of Appeals stated in *Palmer v Board of Zoning Adjustment*, 287 A 2d 535, 542 (D C App 1972), that “[g]enerally it must be shown that compliance with the area restriction would be unnecessarily burdensome. 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 lower ‘practical difficulty’ standards.” *Tyler v D C Bd of Zoning Adjustment*, 606 A 2w 1362, 1365 (D.C. 1992) (citing *Gilmartin v Bd of Zoning Adjustment*, 579 A 2d 1164, 1167 (D C 1990)).

It is well settled that the BZA may consider “a wide range of factors in determining whether there is an ‘unnecessary burden’ or ‘practical difficulty’.” Increased expense and inconvenience to an applicant for a variance are among the factors for the BZA’s consideration.” *Gilmartin*, 579 A 2d at 1711. Other factors to be considered by the BZA include “the severity of the variance(s) requested”, “the weight of the burden of strict compliance”, and “the effect the proposed variance(s) would have on the overall zone plan.” Thus, to demonstrate practical difficulty, an applicant must show that strict compliance with the regulations is burdensome, not impossible.

As such law applies to the facts in this Application, the Applicant has several substantial practical difficulties in complying with a strict application of the Zoning Regulations, and such practical difficulties are a direct result of the exceptional conditions and situations noted in the above section. If the requested relief is not granted, the Applicant will lose its total investment (approximately \$40,000) in its rear deck, which the Applicants invested in good-faith reliance on

the issuance of the Building Permit. In addition, the Applicant will have to repair the Rear Yard, which was in the middle of being modified as a result of the early construction work on the deck in digging footings and removing the existing patio. And after repairing the yard, the Applicant will still be left without access to its Rear Yard.

Without variance relief, the Applicants have no reasonable ability to use their Rear Yard because of the Building's internal configuration of the house. Unlike the neighbor to the west, the Applicant's main living space is on the first floor, and so there is no access from this main living floor without building at least a landing and stairway, which would also need variance relief. And even if the landing and stairway were permitted, the ground floor can be used for either a very small patio space or a parking spot, but only one or the other. Also, if it were a patio space, the Applicants' children's only outdoor play space would be located on the ground floor of a space that abuts a narrow alley, presenting concerns for their safety (something the internal lots would not be concerned about). Building the deck also provides for the use of most of the Applicants' Rear Yard (minus the encroachment), and allows them to take a car off the street and park it on the Property.

The 8-inch encroachment and the 3-foot easement combine to restrict the use of about 25% of the Applicant's Rear Yard. Building the proposed relieves this practical difficulty by providing exterior living space on the main living level.

The location of the Property on the alley has created security concerns for the Applicant. The 3-foot passageway often attracts potential bad actors that wander into the Easement. The provision of a deck here will tend to signal that the even the Easement area is private property. If the Applicant were to provide a gate, it would be a lot more helpful in this regard.

There are several reasons why making the deck any smaller than what is proposed is not feasible. The wood materials were custom ordered for the deck which was approved in the Building Permit. Re-sizing Brazilian/IPE is extremely difficult, as it is a tremendously dense wood that requires special equipment to cut and drill the wood. Also, because of the extraordinarily small lot size, the Rear Yard is only 14.73 feet long. The encroachment removes 8 inches from that amount, and the stairway from the main level to the ground floor, which is only necessary because of the lack of access from the ground floor to the cellar level, removes another three feet from the available space on the deck.

C. Relief Can be Granted without Substantial Detriment to the Public Good

Attached as Exhibit Q are sun studies which show that the existence of the proposed deck will have a minimal impact on light and air to the neighboring property at 1538 T Street, NW. At the rear of 1538 T Street, the ground floor windows are already shaded by that property's overhanging deck as well as a lattice structure (see photos attached as Exhibit R).

In addition, the provision of the deck may improve the security situation in the side alley and the easement passageway, and will allow for safely parking a car, something that was available previously but was removed when the Previous Deck was removed and the patio constructed.

Private easement issues are not zoning issues and not within the jurisdiction of the Board. Nevertheless, the proposed work greatly improves access to and use of the Easement for the two properties to the west.

ANC 2B voted 4-2 to recommend approval of this Application. One dissenting Commissioner expressed a desire that there be a barrier between the parking space and the

easement area, to guarantee that a car would not encroach on the easement. In response to that concern, the Applicants revised the plans to place the deck's columns between the easement and the parking space, providing the requested barrier.

D. Relief Can Be Granted Without Impairing the Intent, Purpose, and Integrity of the Zone Plan

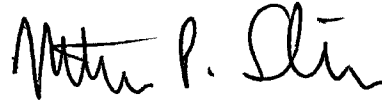
The Applicant is asking for relief to construct a deck that existed for years in this location. More importantly for the protection of the integrity of the Zone Plan, the Applicants are subject to several extraordinary conditions and practical difficulties in complying with a strict interpretation of the Zoning Regulations, and all of these conditions have been cited previously by the Board and the Office of Planning as constituting legitimate justification for variance relief, including the zoning process whereby the Applicants relied in good faith on a duly issued building permit, the small lot size, the internal configuration of the Building, its location along an alley lot, it being perpendicular to an abutting lot and that perpendicular lot having a garage that significantly encroaches on the Rear Yard.

While the zoning process and the issuance of the Building Permit are the main cause of the primary practical difficulty to the Applicants, there are several other critical factors as well, as noted above, making the entire situation so unique as to not threaten the integrity of the Zoning Regulations.

**V.
CONCLUSION**

For the reasons outlined in this pre-hearing statement, the Applicant asserts that it has satisfied the standards for the requested variance relief, and respectfully requests that the Board grant its approval

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Martin P. Sullivan". The signature is fluid and cursive, with the first name "Martin" and last name "Sullivan" clearly distinguishable.

Martin P Sullivan
Sullivan & Barros, LLP

List of Exhibits

Exhibit A – Copies of the Zoning and Other Maps of the Property and Surrounding Area.

Exhibit B - Deed for the Property

Exhibit C – Photographs of the Previous Deck

Exhibit D – Photo showing the view from the deck to Mr Hanlon's house

Exhibit E – Letter of support from 1534 T Street owner

Exhibit F – Correspondence from the Architect to the Applicant Noting the Zoning Due Diligence and Consideration of the Easement.

Exhibit G – Correspondence from the Architect to the Applicant Noting the Approval of the Deck by the Zoning Technician

Exhibit H – Plan page from 2010 DCRA Records, Showing the Previous Deck and Parking Pad

Exhibit I – A letter from the previous owner confirming the existence of the rear deck

Exhibit J – Evidence of financial expenses incurred in reliance on the deck approval

Exhibit K – A copy of the Building Permit for the deck

Exhibit L – A contract for construction of the deck

Exhibit M – The “cease and desist” letter from Mr Hill

Exhibit N – the Notice to Revoke the Building Permit

Exhibit O – A letter from the Contractor Explaining the Difficulty in Returning the Wood

Exhibit P – Photographs of the Easement Area

Exhibit Q – Sun Studies

Exhibit R – Photographs of Neighboring Property

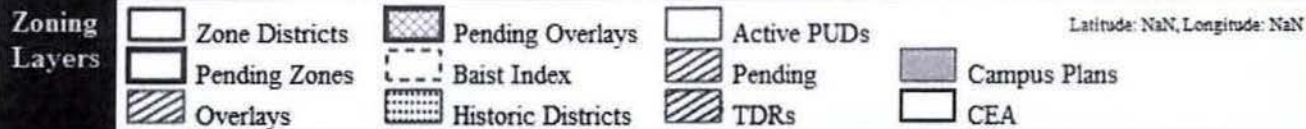
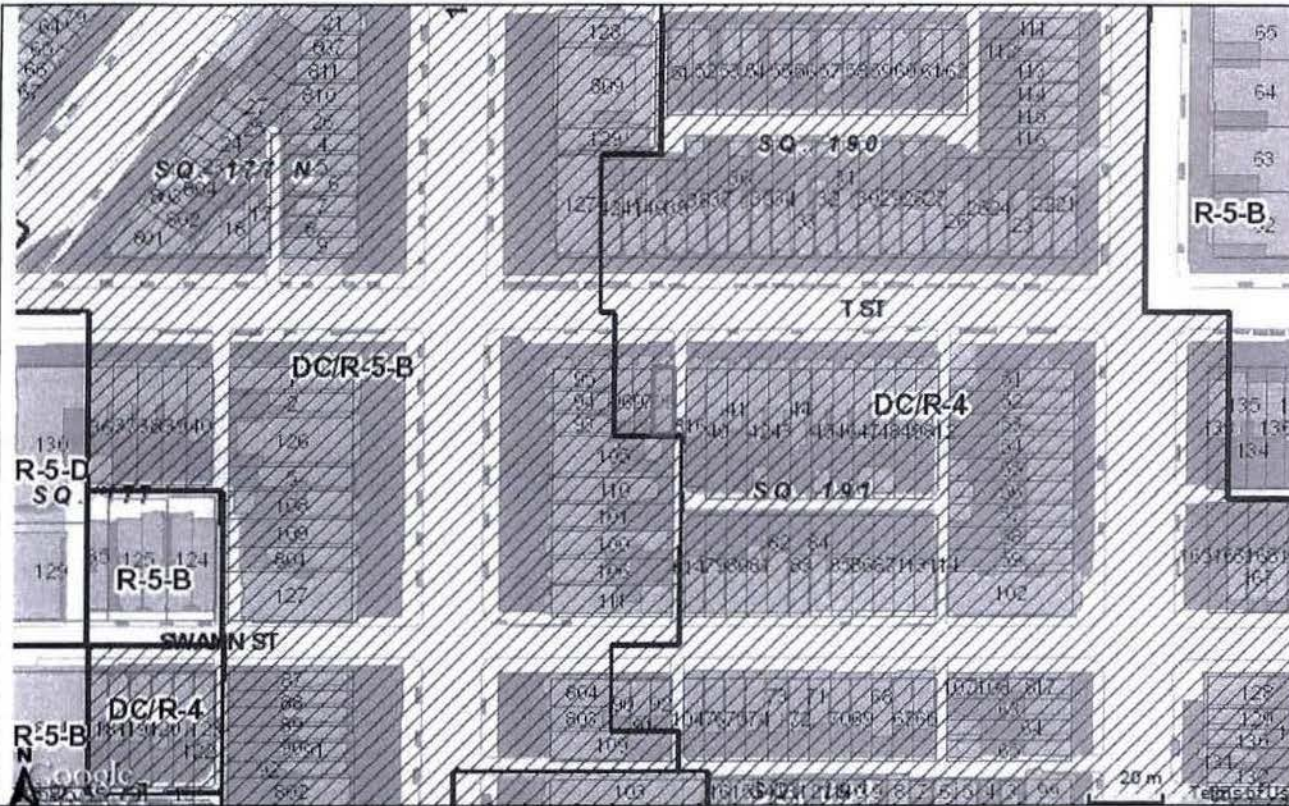
Exhibit S – Plans and Renderings

Exhibit A – Copies of the Zoning and Other Maps of the Property and Surrounding Area.



Zoning Report for Square: 0191 Lot: 0098

February 25, 2014



While DCOZ is committed to providing accurate and timely zoning information via the zoning map, DCOZ cannot guarantee the quality, content, accuracy, or completeness of the information, text, graphics, links, and other items contained therein. All data visualizations on the zoning map should be considered approximate. Information provided in the zoning map should not be used as a substitute for legal, accounting, real estate, business, tax, or other professional advice. DCOZ assumes no liability for any errors, omissions, or inaccuracies in the information provided regardless of the cause of such or for any decision made, action taken, or action not taken by the user in reliance upon any maps or information provided herein. DCOZ retains the right to change any content on its zoning map without prior notice.

Zoning Data Summary⁺

Square/Suffix/Lot	0191 / n/a / 0098
Premises Address	1536 T ST NW
Zoning District (s)	DC/R-4
Overlay District (s)	DC
Pending Zoning District(s)	
Pending Overlay District(s)	
PUDs	None
Pending PUDs	None
Ward	2
Council Member	Jack Evans
ANC	2B
ANC Chairperson	undefined
SMD	2B09
Commissioner	Noah Smith

* For a detailed explanation of zoning related terms, please refer to the DC Zoning Map Glossary available at http://maps.dcoz.dc.gov/css/Map_App_User_Guide/Glossary.pdf.

** To the extent an active PUD exists on a particular site, the PUD zoning depicts the zoning in effect for that site.

Lot 42
1543 T ST
Lot 41
1541 T ST
Lot 40
1539 T ST
Lot 39
1537 T ST
Lot 38
1535 T ST
Lot 37
1533 T ST
Lot 36
1531 T ST
Lot 35
1529 T ST
Lot 34
1527 T ST
Lot 33
1525 T ST
Lot 32
1523 T ST
Lot 31
1521 T ST
Lot 30
1519 T ST
Lot 29
1517 T ST
Lot 28
1515 T ST
Lot 27
1513 T ST
Lot 26
1511 T ST
Lot 25
1509 T ST
Lot 24
1507 T ST

TST

DCR-5-B

DCR-4

Lot 95
1841 16TH ST
Lot 94
1839 16TH ST
Lot 93
1837 16TH ST
Lot 96
1540 T ST
Lot 97
1538 T ST
Lot 98
1536 T ST

Lot 100
1825 16TH ST

Lot 874
1523 SWANN ST
Lot 79
1521 SWANN ST
Lot 80
1519 SWANN ST
Lot 81
1517 SWANN ST
Lot 82
1515 SWANN ST
Lot 83
1513 SWANN ST
Lot 84
1511 SWANN ST
Lot 85
1509 SWANN ST
Lot 86
1507 SWANN ST
Lot 87
1505 SWANN ST
Lot 115
SWANN ST
Lot 114
SWANN ST

Lot 816
1534 T ST
Lot 40
1532 T ST
Lot 41
1530 T ST
Lot 42
1528 T ST
Lot 43
1526 T ST
Lot 44
1524 T ST
Lot 45
1522 T ST
Lot 46
1520 T ST
Lot 47
1518 T ST
Lot 48
1516 T ST
Lot 49
1514 T ST
Lot 812
1512 T ST

Lot 51
1842 16TH ST
Lot 52
1840 16TH ST
Lot 53
1838 16TH ST
Lot 54
1836 16TH ST
Lot 55
1834 16TH ST
Lot 56
1832 16TH ST
Lot 57
1830 16TH ST
Lot 58
1828 16TH ST
Lot 59
1826 16TH ST

40 m
100 ft

Exhibit B - Deed for the Property

DEED

142

THIS DEED, made this 21ST day of September, 2012, By and Between

1536 T STREET ASSOCIATES, LLC, A DISTRICT OF COLUMBIA LIMITED LIABILITY COMPANY, AS SOLE OWNER

Party of the First Part

AND



LT1-5-2012106983-1

RAFEAL ROMEU and LARISSA LEONY, HUSBAND AND WIFE

Parties of the Second Part

WITNESSETH, that in consideration of **TEN DOLLARS (\$10.00)**, the Party of the First Part does hereby grant unto the Parties of the Second Part, in **Fee Simple**, as TENANTS BY THE ENTIRETY, all that piece or parcel of land, together with the improvements, rights, privileges and appurtenances to the same belonging, situate in the District of Columbia, described as follows, to wit



LT2-0-0-3

**SEE EXHIBIT "A" ATTACHED HERETO
AND
MADE A PART HEREOF**

AND the said Party of the First Part covenants that they will warrant specially the property hereby conveyed and that they will execute such further assurances of said land as may be requisite.

3L
mm

By: Sonya L. Levine, Trustee
SONYA LORGE LEVINE, Trustee

This instrument was acknowledged before me on this 21st day of September, 2012 by **SONYA LORGE LEVINE, Trustee of THE B & E LORGE FAMILY TRUST, Member of 1536 T STREET ASSOCIATES, LLC.**

RETURN TO
PARAGON TITLE & ESCROW COMPANY
7415 ARLINGTON ROAD,
BETHESDA, MARYLAND 20814

PROPERTY ADDRESS. 1536 T STREET, NW
WASHINGTON, DC 20009

PARAGON CASE # 1388-12

TITLE INSURER FIRST AMERICAN TITLE INSURANCE COMPANY

EXHIBIT "A"

Lot 98 in Square 191 in a subdivision made by James H Meriwether, as per plat recorded in Liber No 17 at Folio 73 among the Records of the Office of the Surveyor of the District of Columbia

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

Doc# 2012106983 Fees \$32511 50
10/04/2012 11 59AM Pages 3
Filed & Recorded in Official Records of
WASH DC RECORDER OF DEEDS IDA WILLIAMS

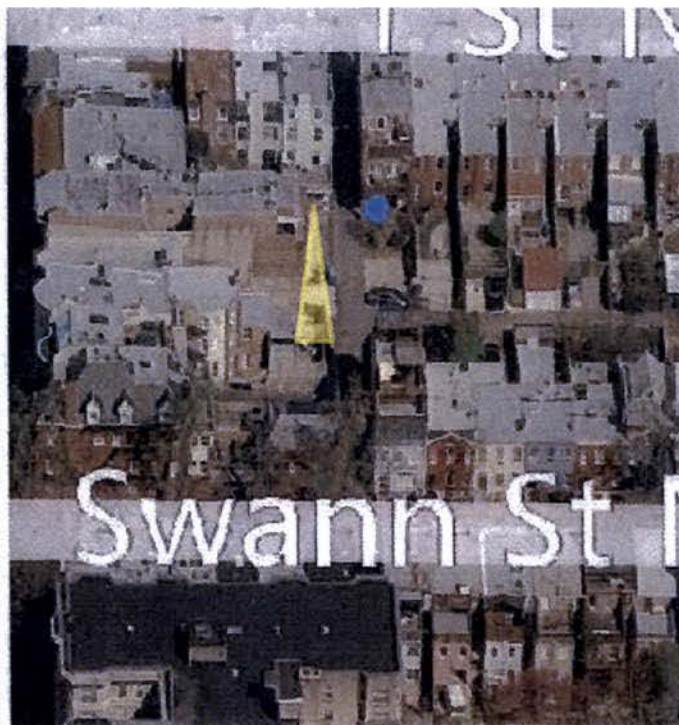
RECORDING	\$	25 00
RECORDATION TAX FEE	\$	16,240 00
SURCHARGE	\$	8 50
TRANSFER TAX FEE	\$	16,240 00

Exhibit C – Photographs of the Previous Deck

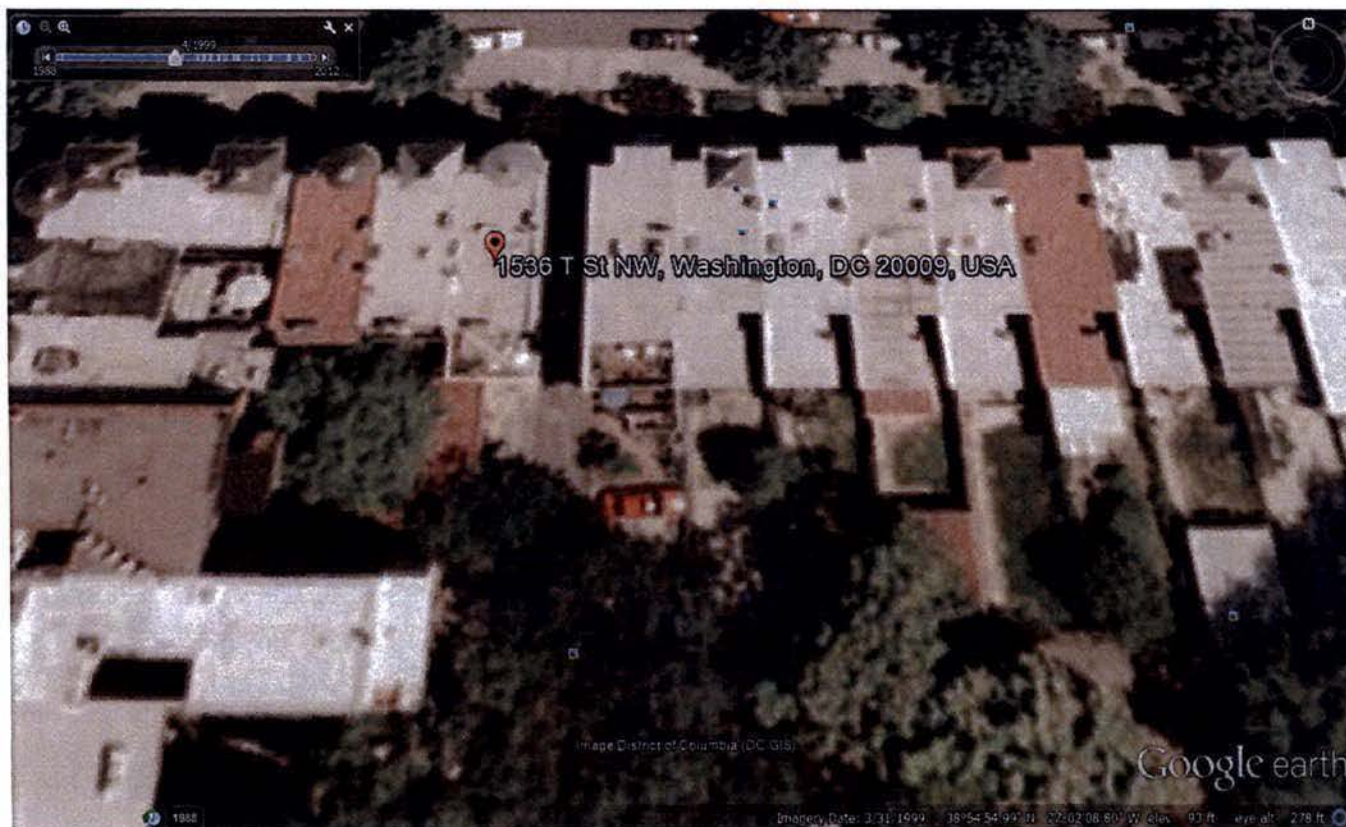
Deck, most recent photos, showing span and privacy trellis.



Deck in 1951



Deck in 1999



Deck in 2002



Deck in 2005



Deck in 2008



Registered analysis

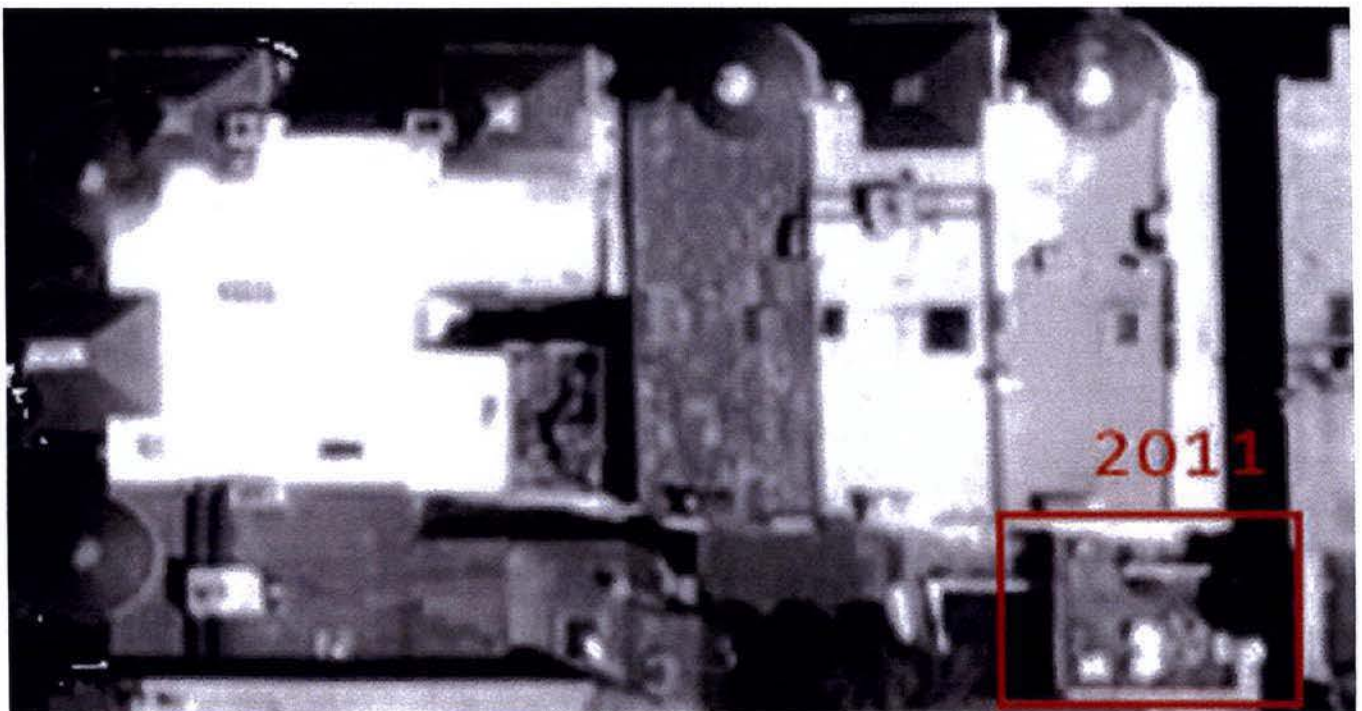
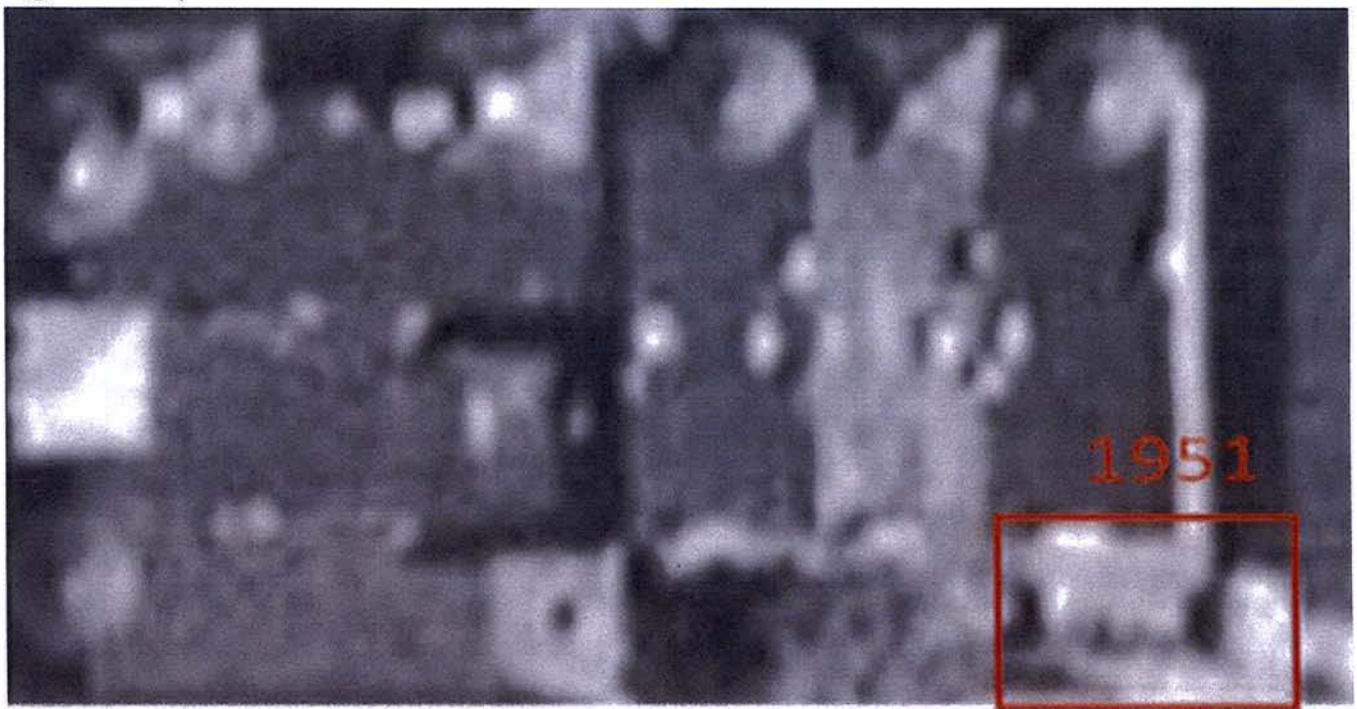


Exhibit D – Photo showing the view from the deck to Mr Hanlon's house



View from proposed deck to Mr. Hanlon's house.

Exhibit E – Letter of support from 1534 T Street owner

JOCHEN R. ANDRITZKY

Lloyd Jordan
Chairperson
District Resident Appointee
DC Board of Zoning Adjustment
Office of Zoning
441 44th St NW, Suite 200/201-S

1534 T St NW
WASHINGTON DC 20009
U.S.A.

Washington DC 20001

DATE
11/20/2013

Dear Mr Jordan and BZA Board Members

I am aware of the renovation project taking place at my neighbor's residence (Rafael Romeu, 1536 T St NW). In spring 2013, he briefed me about his plans to erect a deck, insert a back door, and create a parking space adjacent to the shared alley. I believe his project will add to the life in our already very livable alley, and also contribute to lowering crime and vandalism, being an overall positive for the neighborhood.

Sincerely

A handwritten signature in black ink, appearing to read 'Jochen R. Andritzky', written in a cursive style.

**Exhibit F – Correspondence from the Architect to the
Applicant Noting the Zoning Due Diligence and
Consideration of the Easement.**

MORRIS ARCHITECTS

60 MARKET STREET, #204 GAITHERSBURG, MD 20878
TEL 301-527-1002 FAX 301-527-1003

November 6, 2012

Mr. Rafael Romeu
1536 T Street, N.W.
Washington, DC 20009

Re: 1536 T Street, N.W.
Architectural Services-Zoning Consultation

Dear Rafael:

It was a pleasure meeting with you and discussing your desire to build a deck, create a parking space and to improve the easement access at the rear of your house. I am pleased to offer our proposal for architectural services for the initial zoning consultation for this project.

Scope of Work

The scope of work for the proposed project includes a new rear deck from a new rear kitchen door, with steps leading down to the grade. The scope of work also includes the creation of an off-street parking space and a new fence and gate system to allow the passage of pedestrians to and from the adjoining houses, in relation to an existing easement for this portion of the site.

Scope of Services

Our proposed scope of services shall include research of the Survey Papers at the Office of the DC Surveyor to find historic precedents of a deck at your house, meeting with a Zoning Technician from the DC Department of Consumer and Regulatory Affairs to explore the possibilities and constraints of the proposed project, and analyzing your site from the boundary survey you provide to us. We will meet with you and discuss our findings in order to plan our next strategy for this project.

Professional Services Fee

It is proposed that our professional services fee for this scope of services will be a Not-to-Exceed Fee of \$1,200 (One thousand two hundred dollars). Our invoices will be submitted monthly and will be payable upon receipt. Our hourly billing rates for this project are \$100 (One Hundred Dollars) per hour for principals and \$60 (Sixty Dollars) per hour for draftsmen. We request that a retainer of \$500 (Five Hundred Dollars) be paid to Morris Architects which will be applied toward the final invoice for these services.

MORRIS ARCHITECTS

Reimbursable Expenses

Out-of-pocket expenses such as consulting engineering fees, document reproduction, plotting, scanning, couriers, DC plat and permit fees, travel and parking and so forth are reimbursable expenses and are in addition to our fee. These reimbursable expenses will be billed to you at our cost, and itemized on our invoices.

If these terms are agreeable to you, please indicate your acceptance by signing below. Morris Architects thanks you for this opportunity to submit our proposal and we look forward to working with you on this project.

Sincerely yours;

F. William Morris

Agreed

Date

**Exhibit G – Correspondence from the Architect to the
Applicant Noting the Approval of the Deck by the Zoning
Technician**

MORRIS ARCHITECTS

60 MARKET STREET, #204 GAITHERSBURG, MD 20878
TEL 301-527-1002 FAX 301-527-1003

February 21, 2013

Mr. Rafael Romeu
1536 T Street, N.W.
Washington, DC 20009

Re: 1536 T Street, N.W.

Dear Rafael:

We are pleased to submit this summary letter of our preliminary zoning consultation for a rear deck for your house.

Your existing house at 1536 T Street, N.W. is located in an R-4 zoning district. The existing house currently occupies about 72% of the lot, in excess of the maximum allowable lot occupancy of 60%. We consulted with Jeannette Anderson, a Zoning Technician at the DC Department of Consumer and Regulatory Affairs in order to explore possibilities for a rear deck or rear steps for your house. Ms. Anderson notified us that if evidence could be obtained showing a previously existing rear deck, it might be possible to proceed with plans for a new rear deck. We researched DC Archives and retrieved the permit application documents from a building permit application from 2010. These drawings indicated demolition of an existing rear deck. We forwarded the relevant drawings to Ms. Anderson for her review. Ms. Anderson replied that we could indeed proceed with a permit application for a rear deck based on this evidence.

Any rear deck design will be affected by any constraints the existing easement agreement which exists at the rear three feet of your lot. It will be helpful to obtain the text of this easement in order to determine the details which may impact the deck design.

We have enjoyed working with you on this project and we are pleased to report this good news.

Sincerely yours,

A handwritten signature in black ink that reads "Bill Morris". The signature is written in a cursive, flowing style.

F. William Morris

**Exhibit H – Plan page from 2010 DCRA Records, Showing
the Previous Deck and Parking Pad**

Exhibit I – A letter from the previous owner confirming the existence of the rear deck.

1536 T Street Associates, LLC
c/o Sonya Levine
2910 Greenvale Street
Chevy Chase, Maryland 20815
November 6, 2013

Mr. Matthew Le Grant
Zoning Administrator
DC Department of Consumer and Regulatory Affairs
1100 4th Street S.W., Room 3100
Washington, DC 20024

Dear Mr. Le Grant:

I am submitting this letter at the request of Rafael Romeu, the current owner of 1536 T Street, NW, Washington, D.C. (the Premises).

1536 T Street Associates, LLC (the "LLC") was the prior owner of the Premises. The LLC extensively renovated the Premises and obtained appropriate building permits to do so, including a 2010 permit for the demolition and renovation of the deck and backyard. To the best of my recollection, the existing deck was removed in 2011, because it posed a safety hazard and could not be repaired. The back yard work was completed in 2012.

Sonya Levine
Authorized signatory of the
Managing Member of
1536 T Street Associates, LLC.

Exhibit J – Architect’s invoices

Costs Incurred due to Permit Reliance

Item:

Architecture design, archival research and zoning consultation, Invoice dates:	12/1/2013	\$	3,592
	8/1/2013	\$	6,491
	2/21/2013	\$	1,052
Contractor: Non-refundable Construction Materials; Pre-cut Brazilian Ipe planks, Custom door, Custom steel beams; footings;	9/12/2013	\$	19,500
	9/27/2013	\$	13,000
Total Estimated Costs			\$43,635

MORRIS ARCHITECTS

60 MARKET STREET GAITHERSBURG, MD 20878
INVOICE FOR ARCHITECTURAL SERVICES

DATE: December 1, 2013
PROJECT: 1536 T Street, N.W.
PROJECT NO: 1221
INVOICE NO: 1221.120113

TO: Mr. Rafael Romeu
1536 T Street, N.W.
Washington, DC 20009

In accordance with our understanding, there is due at this time, for architectural services and reimbursable expenses incurred for this project, the following sum, which is due and payable upon receipt of this invoice.

Amount Due: Three thousand five hundred ninety-two dollars and nine cents
Period Invoiced: August 1, 2013 through November 30, 2013

The current status of this account follows:

<u>Architectural Services</u>	<u>This Invoice</u>
-------------------------------	---------------------

Zoning Consultation	
Schematic Design	
Construction Documents	
Bid/Pricing Phase Services	
Permit Processing	
Additional Services:	
Architectural Design	20 hours @ \$100/hour \$2,000.00
	6 hours @ No Charge
Archival Research for zoning issues	26 hours @ \$60/hour \$1,560.00
Teleconferences/emails for zoning issues	4 hours @ No Charge
Construction Administration	
	SUBTOTAL <u>\$3,560.00</u>

<u>Reimbursable Expenses</u>

Engineering Consultant	
Fees	
Couriers/Express Mail	
Document Reproduction	\$20.09
Parking	<u>\$12.00</u>
	SUBTOTAL <u>\$32.09</u>

TOTAL DUE THIS INVOICE: \$3,592.09

MORRIS ARCHITECTS
60 MARKET STREET GAITHERSBURG, MD 20878
INVOICE FOR ARCHITECTURAL SERVICES

DATE: August 1, 2013
PROJECT: 1536 T Street, N.W.
PROJECT NO: 1221
INVOICE NO: 1221.080113

TO: Mr. Rafael Romeu
1536 T Street, N.W.
Washington, DC 20009

In accordance with our understanding, there is due at this time, for architectural services and reimbursable expenses incurred for this project, the following sum, which is due and payable upon receipt of this invoice.

Amount Due: Six thousand four hundred ninety dollars and ninety-one cents
Period Invoiced: February 22, 2013 through July 31, 2013

The current status of this account follows:

<u>Architectural Services</u>	<u>This Invoice</u>
Zoning Consultation	
Schematic Design	\$900.00
Construction Documents	\$2,700.00
Bid/Pricing Phase Services	\$600.00
Permit Processing	\$600.00
Additional Services	
Construction Administration	
SUBTOTAL	<u>\$4,800.00</u>
 <u>Reimbursable Expenses</u>	
Engineering Consultant (Structural)	\$1,000.00
Fees (Building Permit \$407.88, Sediment Control \$98.00, Plat Fee \$55.00)	\$560.88
Couriers/Express Mail	\$10.49
Document Reproduction (7/22, 7/24, 8/2)	\$65.54
Parking	<u>\$54.00</u>
SUBTOTAL	\$1,690.91
TOTAL DUE THIS INVOICE:	\$6,490.91

MORRIS ARCHITECTS
60 MARKET STREET GAITHERSBURG, MD 20878
INVOICE FOR ARCHITECTURAL SERVICES

DATE: February 21, 2013
PROJECT: 1536 T Street, N.W.
PROJECT NO: 1221
INVOICE NO: 1221.022113

TO: Mr. Rafael Romeu
1536 T Street, N.W.
Washington, DC 20009

In accordance with our understanding, there is due at this time, for architectural services and reimbursable expenses incurred for this project, the following sum, which is due and payable upon receipt of this invoice.

Amount Due: Five hundred fifty-two dollars & zero cents
Period Invoiced: Inception through February 21, 2013

The current status of this account follows:

<u>Architectural Services</u>	<u>This Invoice</u>
Zoning Consultation 10 hours @ \$100 per hour.....	\$1,000.00
Schematic Design	
Construction Documents	
Bid/Pricing Phase Services	
Permit Processing	
Additional Services	
Construction Administration	
SUBTOTAL	<u>\$1,000.00</u>

<u>Reimbursable Expenses</u>	
Engineering Consultant	
Permit Fees	
Couriers/Express Mail	
Document Reproduction (1/31, 2/21)	\$34.00
Photographs	
Parking	<u>\$18.00</u>
SUBTOTAL	<u>\$52.00</u>

TOTAL DUE THIS INVOICE:	\$1,052.00
LESS CREDIT FOR RETAINER RECEIVED:	-(\$500.00)
TOTAL BALANCE DUE ON ACCOUNT:	\$552.00

AIA Document A105™ – 2007

Standard Form of Agreement Between Owner and Contractor for a Residential or Small Commercial Project

AGREEMENT made as of the Twelfth
in the year Two Thousand Thirteen.
(In words, indicate day, month and year.)

day of September

BETWEEN the Owner:
(Name, legal status, address and other information)

Rafael Romeu
1536 T Street, N.W.
Washington, DC 20009

and the Contractor:
(Name, legal status, address and other information)

Sergey Kovalchuk
SLK Construction
8557 Horseshoe Lane
Potomac, MD 20854

for the following Project:
(Name, location and detailed description)

Rear Deck Addition
1536 T street, N.W.
Washington, DC 20009

The Project includes a new rear deck, related stairs down to grade, a new concrete slab on grade, a new rear entry door, and sliding metal gates at grade.

The Architect:
(Name, legal status, address and other information)

Morris Architects
60 Market Street, #204
Gaithersburg, MD 20878

The Owner and Contractor agree as follows.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

State or local law may impose requirements on contracts for home improvements. If this document will be used for Work on the Owner's residence, the Owner should consult local authorities or an attorney to verify requirements applicable to this Agreement.

Exhibit "A"
September 12, 2013

1536 T Street, NW
Washington, DC 20009

Milestones for Progress Payments

Progress Payments, each payment a percentage of total Contract Sum:

30%	Due at commencement of contract (contract signing)
20%	Footings complete
20%	Substantial Completion of structural framing
10%	Substantial completion of electrical wiring (rough-in work)
10%	Substantial Completion of concrete slab on grade
10%	Upon Final Completion

The Contractor shall have the right to complete work and submit Applications for payment in a different chronological order from this Draw Schedule.



Check Images

Account: Checking [REDACTED] | Check Number: [REDACTED] | Date Posted: 9/13/2013 | Amount: \$19,500.00

Zoom In Zoom Out Print

RAFAEL ROMEU 2480 16TH ST NW APT C24 WASHINGTON, DC 20009		
Pay to the order of <u>SLK Construction</u>		<u>September 12, 2013</u>
<u>Nineteen thousand five hundred and 00/100</u>		<u>\$ 19,500.00</u>
Bank Fund Staff Federal Credit Union 1818 H STREET, N.W., WASHINGTON, DC 20433		
for <u>30% of Roman Road</u>		<u>[Signature]</u>
MICR line: [REDACTED]		
20130912 [REDACTED]		PAY TO THE ORDER OF PNC BANK, N.A. MARYLAND FOR DEPOSIT ONLY SLK CONSTRUCTION INC.



Check Images

Account: Checking ~~XXXXXXXXXX~~ | Check Number: ~~XXXXXX~~ | Date Posted: 9/30/2013 | Amount: \$13,000.00

Zoom In Zoom Out Print

RAFAEL B ROMEU
1636 T STREET NW
WASHINGTON, DC 20008

9/27/2013

Pay to the order of SLK Construction \$13,000⁰⁰/₁₀₀

Thirteen Thousand

BANK-UNITED STAFF FEDERAL CREDIT UNION
1122 F ST NW SUITE 130 WASHINGTON, DC 20004-3405

for 20% Dues

Ruffin

**PAY TO THE ORDER OF
FND BANK N.A.
MARYLAND
FOR DEPOSIT ONLY
SLK CONSTRUCTION INC.**

Exhibit K – A copy of the Building Permit for the deck

D13



Department of Consumer and Regulatory Affairs

Permit Operations Division

1100 4th Street SW

Washington DC 20024

Tel. (202) 442 - 4589

Fax (202) 442 - 4862



B

BUILDING PERMIT

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

Issue Date: 07/26/2013

PERMIT NO. B1309278

Expiration Date: 07/26/2014

Address of Project: 1536 T ST NW		Zone:	Ward: 2	Square: 0191	Suffix:	Lot: 0098
Description Of Work: Construct rear deck addition						
Permission Is Hereby Granted To: Rafael Romeu		Owner Address: 1536 T ST, NW 20009		PERMIT FEE: \$407.88		
Permit Type: Addition	Existing Use: Two-Family Flat - R-3	Proposed Use: Two-Family Flat - R-3			Plans: Yes	
Agent Name: Paula Morris	Agent Address: 60 Market St / Suite 204 20878	Existing Dwell Units: 2	Proposed Dwell Units: 2	No. of Stories: 3	Floor(s) Involved: 1	
Conditions/ Restrictions:						
This Permit Expires if no Construction is Started Within 1 Year or if the Inspection is Over 1 Year. All Construction Done According To The Current Building Codes And Zoning Regulations; As a condition precedent to the issuance of this permit, the owner agrees to conform with all conditions set forth herein, and to perform the work authorized hereby in accordance with the approved application and plans on file with the District Government and in accordance with all applicable laws and regulations of the District of Columbia. The District of Columbia has the right to enter upon the property and to inspect all work authorized by this permit and to require any change in construction which may be necessary to ensure compliance with the permit and with all the applicable regulations of the District of Columbia. Work authorized under this Permit must start within one(1) year of the date appearing on this permit or the permit is automatically void. If work is started, any application for partial refund Lead Paint Abatement Whenever any such work related to this Permit could result in the disturbance of lead based paint, the permit holder shall abide by all applicable paint activities provisions of the 'Lead Hazard Prevention and Elimination Act of 2008' and the EPA 'Lead Renovation, Repair and Painting rule' regarding lead-based include adherence to lead-safe work practices. For more information, go to http://ddoe.dc.gov, Lead and Healthy Housing.						
Director: Nicholas A. Majett		Permit Clerk: Stacie Williams				
TO REPORT WASTE, FRAUD OR ABUSE BY ANY DC GOVERNMENT OFFICIAL. CALL THE DC INSPECTOR GENERAL AT 1-800-521-1639 FOR CONSTRUCTION INSPECTION INQUIRIES CALL (202) 442-9557 TO SCHEDULE INSPECTIONS PLEASE CALL (202) 442-9557						

Exhibit L – A contract for construction of the deck

AIA® Document A105™ – 2007

Standard Form of Agreement Between Owner and Contractor for a Residential or Small Commercial Project

AGREEMENT made as of the Twelfth
in the year Two Thousand Thirteen
(In words, indicate day, month and year)

day of September

BETWEEN the Owner
(Name, legal status, address and other information)

Rafael Romeu
1536 T Street, N.W.
Washington, DC 20009

and the Contractor
(Name, legal status, address and other information)

Sergey Kovalchuk
SLK Construction
8557 Horseshoe Lane
Potomac, MD 20854

for the following Project:
(Name, location and detailed description)

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Washington, DC 20009

The Project includes a new rear deck, related stairs down to grade, a new concrete slab on grade, a new rear entry door, and sliding metal gates at grade.

The Architect.
(Name, legal status, address and other information)

Morris Architects
60 Market Street, #204
Gaithersburg, MD 20878

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

State or local law may impose requirements on contracts for home improvements. If this document will be used for Work on the Owner's residence, the Owner should consult local authorities or an attorney to verify requirements applicable to this Agreement.

The Owner and Contractor agree as follows

Init.

TABLE OF ARTICLES

1	THE CONTRACT DOCUMENTS
2	DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION DATE
3	CONTRACT SUM
4	PAYMENT
5	INSURANCE
6	GENERAL PROVISIONS
7	OWNER
8	CONTRACTOR
9	ARCHITECT
10	CHANGES IN THE WORK
11	TIME
12	PAYMENTS AND COMPLETION
13	PROTECTION OF PERSONS AND PROPERTY
14	CORRECTION OF WORK
15	MISCELLANEOUS PROVISIONS
16	TERMINATION OF THE CONTRACT
17	OTHER TERMS AND CONDITIONS

ARTICLE 1 THE CONTRACT DOCUMENTS

§ 1.1 The Contractor shall complete the Work described in the Contract Documents for the Project. The Contract Documents consist of

- .1 this Agreement signed by the Owner and Contractor;
- .2 the drawings and specifications prepared by the Architect, dated July 15, 2013, and enumerated as follows

Drawings

Number	Title	Date
A-1	Cover Sheet, Site Plan	7/15/2013
A-2	Existing Conditions / Demolition Plan	7/15/2013
A-3	Construction Plans	7/15/2013
A-4	Elevations, Sections	7/15/2013
A-5	Framing Plans	7/15/2013
Specifications A-6	General Notes, Lighting Schedule	7/15/2013

Section

Title

Pages

The Specifications are contained within the Drawings.

- .3 addenda prepared by the Architect as follows:

Number
One

Date
September 12, 2013

Pages
1-2

- .4 written orders for changes in the Work issued after execution of this Agreement; and

- .5 other documents, if any, identified as follows:

Exhibit "A" Milestones for Progress Payments

ARTICLE 2 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

The number of calendar days available to the Contractor to substantially complete the Work is the Contract Time. The date of commencement of the Work shall be the date of this Agreement unless otherwise indicated below. The Contractor shall substantially complete the Work, no later than sixty-seven (67) calendar days from the date of commencement, subject to adjustment as provided in Article 10 and Article 11.
(Insert the date of commencement, if it differs from the date of this Agreement.)

ARTICLE 3 CONTRACT SUM

§ 3.1 Subject to additions and deductions in accordance with Article 10, the Contract Sum is:

\$65,000.00 (Sixty-five thousand dollars)

§ 3.2 For purposes of payment, the Contract Sum includes the following values related to portions of the Work:
(Itemize the Contract Sum among the major portions of the Work.)

Portion of the Work	Value
There is no Schedule of Values for payment purposes.	

§ 3.3 Unit prices, if any, are as follows:

(Identify and state the unit price; state the quantity limitations, if any, to which the unit price will be applicable.)

Item	Units and Limitations	Price per Unit (\$0.00)
There are no unit prices.		

§ 3.4 Allowances included in the Contract Sum, if any, are as follows:

(Identify allowance and state exclusions, if any, from the allowance price.)

Item	Price (\$0.00)
Lighting fixtures	\$4,000.00 (Four thousand dollars)

§ 3.5 The Contract Sum is based upon the following alternates, if any, which are described in the Contract Documents and hereby accepted by the Owner:

(State the numbers or other identification of accepted alternates. If the bidding or proposal documents permit the Owner to accept other alternates subsequent to the execution of this Agreement, attach a schedule of such other alternates showing the amount for each and the date when that amount expires.)

The Owner accepts the alternate to install hinged access door(s) at stair opening of deck. Refer to Addendum One for additional information for this item.

§ 3.6 The Contract Sum shall include all items and services necessary for the proper execution and completion of the Work.

ARTICLE 4. PAYMENT

§ 4.1 Based on Contractor's Applications for Payment certified by the Architect, the Owner shall pay the Contractor, in accordance with Article 12, as follows:

(Insert below timing for payments and provisions for withholding retainage, if any.)

The Owner shall pay the Contractor the current amount due from the certified Application for Payment within five calendar days after Architect has certified the Application. Payment amounts shall be in accordance with "Exhibit A" Milestones for Progress Payments.

§ 4.2 Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at the rate below, or in the absence thereof, at the legal rate prevailing at the place of the Project.

ARTICLE 5. INSURANCE

§ 5.1 The Contractor shall provide Contractor's general liability and other insurance as follows:

(Insert specific insurance requirements and limits.)

Type of Insurance

Limit of Liability (\$0.00)

Contractor's Umbrella coverage with Erie Insurance Co.
with \$2,000,000 coverage.

§ 5.2 The Owner shall provide property insurance to cover the value of the Owner's property, including any Work provided under this Agreement. The Contractor is entitled to receive an increase in the Contract Sum equal to the insurance proceeds related to a loss for damage to the Work covered by the Owner's property insurance.

§ 5.3 The Contractor shall obtain an endorsement to its general liability insurance policy to cover the Contractor's obligations under Section 8.12.

§ 5.4 Each party shall provide certificates of insurance showing their respective coverages prior to commencement of the Work.

§ 5.5 Unless specifically precluded by the Owner's property insurance policy, the Owner and Contractor waive all rights against (1) each other and any of their subcontractors, suppliers, agents and employees, each of the other; and (2) the Architect, Architect's consultants and any of their agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance or other insurance applicable to the Work.

ARTICLE 6 GENERAL PROVISIONS

§ 6.1 THE CONTRACT

The Contract represents the entire and integrated agreement between the parties and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a written modification in accordance with Article 10.

§ 6.2 THE WORK

The term "Work" means the construction and services required by the Contract Documents, and includes all other labor, materials, equipment and services provided, or to be provided, by the Contractor to fulfill the Contractor's obligations.

§ 6.3 INTENT

The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all.

§ 6.4 OWNERSHIP AND USE OF ARCHITECT'S DRAWINGS, SPECIFICATIONS AND OTHER DOCUMENTS

Documents prepared by the Architect are instruments of the Architect's service for use solely with respect to this Project. The Architect shall retain all common law, statutory and other reserved rights, including the copyright. The Contractor, subcontractors, sub-subcontractors, and material or equipment suppliers are authorized to use and reproduce the instruments of service solely and exclusively for execution of the Work. The instruments of service may not be used for other Projects or for additions to this Project outside the scope of the Work without the specific written consent of the Architect.

ARTICLE 7 OWNER

§ 7.1 INFORMATION AND SERVICES REQUIRED OF THE OWNER

§ 7.1.1 If requested by the Contractor, the Owner shall furnish all necessary surveys and a legal description of the site.

§ 7.1.2 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, the Owner shall obtain and pay for other necessary approvals, easements, assessments and charges.

§ 7.2 OWNER'S RIGHT TO STOP THE WORK

If the Contractor fails to correct Work which is not in accordance with the Contract Documents, the Owner may direct the Contractor in writing to stop the Work until the correction is made.

§ 7.3 OWNER'S RIGHT TO CARRY OUT THE WORK

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a seven day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies, correct such deficiencies. In such case, the Contract Sum shall be adjusted to deduct the cost of correction from payments due the Contractor.

§ 7.4 OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS

§ 7.4.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project.

§ 7.4.2 The Contractor shall coordinate and cooperate with the Owner's own forces and separate contractors employed by the Owner.

§ 7.4.3 Costs caused by delays or by improperly timed activities or defective construction shall be borne by the party responsible therefor.

ARTICLE 8 CONTRACTOR

§ 8.1 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

§ 8.1.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents.

§ 8.1.2 The Contractor shall carefully study and compare the Contract Documents with each other and with information furnished by the Owner. Before commencing activities, the Contractor shall (1) take field measurements and verify field conditions, (2) carefully compare this and other information known to the Contractor with the Contract Documents, and (3) promptly report errors, inconsistencies or omissions discovered to the Architect.

§ 8.2 CONTRACTOR'S CONSTRUCTION SCHEDULE

The Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner's and Architect's information a Contractor's construction schedule for the Work.

§ 8.3 SUPERVISION AND CONSTRUCTION PROCEDURES

§ 8.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures, and for coordinating all portions of the Work.

§ 8.3.2 The Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect the names of subcontractors or suppliers for each portion of the Work. The Contractor shall not contract with any subcontractor or supplier to whom the Owner or Architect have made a timely and reasonable objection.

§ 8.4 LABOR AND MATERIALS

§ 8.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work.

§ 8.4.2 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Contract Work. The Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.

§ 8.5 WARRANTY

The Contractor warrants to the Owner and Architect that (1) materials and equipment furnished under the Contract will be new and of good quality unless otherwise required or permitted by the Contract Documents, (2) the Work will be free from defects not inherent in the quality required or permitted, and (3) the Work will conform to the requirements of the Contract Documents.

§ 8.6 TAXES

The Contractor shall pay sales, consumer, use and similar taxes that are legally required when the Contract is executed.

§ 8.7 PERMITS, FEES AND NOTICES

§ 8.7.1 The Contractor shall obtain and pay for the building permit and other permits and governmental fees, licenses and inspections necessary for proper execution and completion of the Work.

§ 8.7.2 The Contractor shall comply with and give notices required by agencies having jurisdiction over the Work. If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume full responsibility for such Work and shall bear the attributable costs. The Contractor shall promptly notify the Architect in writing of any known inconsistencies in the Contract Documents with such governmental laws, rules and regulations.

§ 8.8 SUBMITTALS

The Contractor shall promptly review, approve in writing and submit to the Architect Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents. Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents.

§ 8.9 USE OF SITE

The Contractor shall confine operations at the site to areas permitted by law, ordinances, permits, the Contract Documents and the Owner.

§ 8.10 CUTTING AND PATCHING

The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly.

§ 8.11 CLEANING UP

The Contractor shall keep the premises and surrounding area free from accumulation of debris and trash related to the Work. At the completion of the Work, the Contractor shall remove its tools, construction equipment, machinery and surplus material, and shall properly dispose of waste materials

§ 8.12 INDEMNIFICATION

To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder

ARTICLE 9 ARCHITECT

§ 9.1 The Architect will provide administration of the Contract as described in the Contract Documents. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents

§ 9.2 The Architect will visit the site at intervals appropriate to the stage of construction to become generally familiar with the progress and quality of the Work

§ 9.3 The Architect will not have control over or charge of, and will not be responsible for, construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Contractor's responsibility. The Architect will not be responsible for the Contractor's failure to carry out the Work in accordance with the Contract Documents

§ 9.4 Based on the Architect's observations and evaluations of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor

§ 9.5 The Architect has authority to reject Work that does not conform to the Contract Documents

§ 9.6 The Architect will promptly review and approve or take appropriate action upon Contractor's submittals, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents

§ 9.7 The Architect will promptly interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request from either the Owner or Contractor

§ 9.8 Interpretations and decisions of the Architect will be consistent with the intent of and reasonably inferable from the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either and will not be liable for results of interpretations or decisions rendered in good faith

§ 9.9 The Architect's duties, responsibilities and limits of authority as described in the Contract Documents shall not be changed without written consent of the Owner, Contractor and Architect. Consent shall not be unreasonably withheld

ARTICLE 10 CHANGES IN THE WORK

§ 10.1 The Owner, without invalidating the Contract, may order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and Contract Time being adjusted accordingly in writing. If the Owner and Contractor can not agree to a change in the Contract Sum, the Owner shall pay the Contractor its actual cost plus reasonable overhead and profit

§ 10.2 The Architect will have authority to order minor changes in the Work not involving changes in the Contract Sum or the Contract Time and not inconsistent with the intent of the Contract Documents. Such orders shall be in writing and shall be binding on the Owner and Contractor. The Contractor shall carry out such orders promptly

§ 10.3 If concealed or unknown physical conditions are encountered at the site that differ materially from those indicated in the Contract Documents or from those conditions ordinarily found to exist, the Contract Sum and Contract Time shall be subject to equitable adjustment

ARTICLE 11 TIME

§ 11.1 Time limits stated in the Contract Documents are of the essence of the Contract.

§ 11.2 If the Contractor is delayed at any time in progress of the Work by changes ordered in the Work, or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Contractor's control, the Contract Time shall be subject to equitable adjustment.

ARTICLE 12 PAYMENTS AND COMPLETION

§ 12.1 CONTRACT SUM

The Contract Sum stated in the Agreement, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

§ 12.2 APPLICATIONS FOR PAYMENT

§ 12.2.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment for Work completed in accordance with the values stated in the Agreement. Such Application shall be supported by data substantiating the Contractor's right to payment as the Owner or Architect may reasonably require. Payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment stored, and protected from damage, off the site at a location agreed upon in writing.

§ 12.2.2 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment, all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or other encumbrances adverse to the Owner's interests.

§ 12.3 CERTIFICATES FOR PAYMENT

The Architect will, within seven days after receipt of the Contractor's Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Contractor, for such amount as the Architect determines is properly due, or notify the Contractor and Owner in writing of the Architect's reasons for withholding certification in whole or in part.

§ 12.4 PROGRESS PAYMENTS

§ 12.4.1 After the Architect has issued a Certificate for Payment, the Owner shall make payment in the manner provided in the Contract Documents.

§ 12.4.2 The Contractor shall promptly pay each subcontractor and supplier, upon receipt of payment from the Owner, an amount determined in accordance with the terms of the applicable subcontracts and purchase orders.

§ 12.4.3 Neither the Owner nor the Architect shall have responsibility for payments to a subcontractor or supplier.

§ 12.4.4 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the requirements of the Contract Documents.

§ 12.5 SUBSTANTIAL COMPLETION

§ 12.5.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so the Owner can occupy or utilize the Work for its intended use.

§ 12.5.2 When the Work or designated portion thereof is substantially complete, the Architect will make an inspection to determine whether the Work is substantially complete. When the Architect determines that the Work is substantially complete the Architect shall prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion, shall establish the responsibilities of the Owner and Contractor, and shall fix the time within which the

Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ 12.6 FINAL COMPLETION AND FINAL PAYMENT

§ 12.6.1 Upon receipt of a final Application for Payment, the Architect will inspect the Work. When the Architect finds the Work acceptable and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment

§ 12.6.2 Final payment shall not become due until the Contractor submits to the Architect releases and waivers of liens, and data establishing payment or satisfaction of obligations, such as receipts, claims, security interests or encumbrances arising out of the Contract.

§ 12.6.3 Acceptance of final payment by the Contractor, a subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

ARTICLE 13 PROTECTION OF PERSONS AND PROPERTY

The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs, including all those required by law in connection with performance of the Contract. The Contractor shall take reasonable precautions to prevent damage, injury or loss to employees on the Work, the Work and materials and equipment to be incorporated therein, and other property at the site or adjacent thereto. The Contractor shall promptly remedy damage and loss to property caused in whole or in part by the Contractor, or by anyone for whose acts the Contractor may be liable.

ARTICLE 14 CORRECTION OF WORK

§ 14.1 The Contractor shall promptly correct Work rejected by the Architect as failing to conform to the requirements of the Contract Documents. The Contractor shall bear the cost of correcting such rejected Work, including the costs of uncovering, replacement and additional testing

§ 14.2 In addition to the Contractor's other obligations including warranties under the Contract, the Contractor shall, for a period of one year after Substantial Completion, correct work not conforming to the requirements of the Contract Documents.

§ 14.3 If the Contractor fails to correct nonconforming Work within a reasonable time, the Owner may correct it in accordance with Section 7.3.

ARTICLE 15 MISCELLANEOUS PROVISIONS

§ 15.1 ASSIGNMENT OF CONTRACT

Neither party to the Contract shall assign the Contract as a whole without written consent of the other.

§ 15.2 TESTS AND INSPECTIONS

§ 15.2.1 At the appropriate times, the Contractor shall arrange and bear cost of tests, inspections and approvals of portions of the Work required by the Contract Documents or by laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities.

§ 15.2.2 If the Architect requires additional testing, the Contractor shall perform those tests.

§ 15.2.3 The Owner shall bear cost of tests, inspections or approvals that do not become requirements until after the Contract is executed.

§ 15.3 GOVERNING LAW

The Contract shall be governed by the law of the place where the Project is located

ARTICLE 16 TERMINATION OF THE CONTRACT

§ 16.1 TERMINATION BY THE CONTRACTOR

If the Architect fails to certify payment as provided in Section 12.3 for a period of 30 days through no fault of the Contractor, or if the Owner fails to make payment as provided in Section 12.4.1 for a period of 30 days, the Contractor may, upon seven additional days' written notice to the Owner and Architect, terminate the Contract and recover from

the Owner payment for Work executed including reasonable overhead and profit, and costs incurred by reason of such termination.

§ 16.2 TERMINATION BY THE OWNER FOR CAUSE

§ 16.2.1 The Owner may terminate the Contract if the Contractor

- .1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the subcontractors;
- .3 persistently disregards laws, ordinances, or rules, regulations or orders of a public authority having jurisdiction; or
- .4 is otherwise guilty of substantial breach of a provision of the Contract Documents.

§ 16.2.2 When any of the above reasons exist, the Owner, after consultation with the Architect, may without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' written notice, terminate employment of the Contractor and may

- .1 take possession of the site and of all materials thereon owned by the Contractor, and
- .2 finish the Work by whatever reasonable method the Owner may deem expedient

§ 16.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 16.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

§ 16.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, such excess shall be paid to the Contractor. If such costs exceed the unpaid balance, the Contractor shall pay the difference to the Owner. This obligation for payment shall survive termination of the Contract.

§ 16.3 TERMINATION BY THE OWNER FOR CONVENIENCE

The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause. The Contractor shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed.

ARTICLE 17 OTHER TERMS AND CONDITIONS

(Insert any other terms or conditions below.)

This Agreement entered into as of the day and year first written above.

(If required by law, insert cancellation period, disclosures or other warning statements above the signatures.)

OWNER (Signature)

Rafael Romeu, Owner
(Printed name, title and address)

21536 T Street NW

Washington, DC 20009

CONTRACTOR (Signature)

SERGEY L KOVALCHUK
(Printed name, title and address) PRESIDENT

8557 HORSESHOE LANE

POTOMAC MD 20854

LICENSE NO.: 70103573

JURISDICTION: DC

CAUTION: You should sign an original AIA Contract Document, on which this text appears in RED. An original assures that changes will not be obscured.

Init.

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Activity for your account is displayed below. Click the check number hyperlink to view a check image if available for your account.

Checking	
Account Name:	Checking
Account Number:	
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Current Balance:	
Available Balance:	
Dividend Earned YTD:	
Dividend Earned Last Year:	

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Account:	Type:	Category:	From:	To:	
Checking	34 ▾ Check	▾ -- ALL --	▾ 9/20/2013	9/30/2013	 Display

Date	Type	No.	Category	Description	Debit	Credit	Balance
9/30/2013	CHECK	 2008	Select Category		(\$13,000.00)		\$
9/23/2013	CHECK	 106	Select Category		(\$17,290.00)		\$

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Exhibit M – The “cease and desist” letter from Mr. Hill

******HAND DELIVERED September 29, 2013 9:45 PM****

Mr. Rafael Romeu

1536 T ST, NW

Washington, DC 2009

Dear Mr. Romeu,

This is to advise you that your plan to construct a deck behind your property at the above address is not in compliance with the District's building and code requirements for the following reasons:

- **The plans presented to me by your architect and received by me on August 3, 2013 do not show my legally sufficient easement as indicated in the deed to your property,**
- **Those plans intend to considerably alter both the vertical and horizontal dimensions accorded me under the easement in your deed,**
- **Disturbance of that easement in the absence of my consent is not legally permissible,**
- **If these plans were used to obtain a building permit –again without a showing of my easement– they are deficient on their face and any construction on your part is in violation of the District's requirements,**
- **Those plans appear to disturb my easement such that I would be unable to transport my garbage to the alley; I would be unable to safely move through that easement and that disturbance would otherwise present an unacceptable public health hazard,**
- **Your plans for a "reconstruction" of a deck behind your property do not meet the District's building code requirements,**
- **You have not complied with the public display of a building permit for the requisite notice period; there is a paper attached to the inside of your front window facing the alley to the east of your property, but it is not possible to tell whether the same is a legitimate building permit. Moreover, if this is a legitimate building permit, it certainly does not satisfy the District's requirements that it must be prominently displayed and visible from the front of your house,**
- **Given the deficiency with the display of what may be a building permit, you are not in compliance with the District's requirements and the construction that you may have already undertaken is in violation of those requirements.**

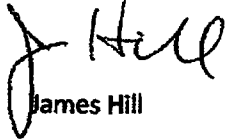
Given these and other reasons, you must cease and desist from any further construction until or unless you have remediated the considerable problems above. The spray paint in my easement indicating a construction marker of some kind suggests that you intend to proceed with this project and you must stop immediately until such time as my property rights and the property rights of the residents at 1540 T ST, NW and others have been considered. Failure by you to cease work on this project will result in notification to the appropriate building and construction authorities within the District and you may subject yourself to fines, penalties and other legal action.

D19

I have discussed your illegal construction with others in the neighborhood and I have learned that you have neither consulted with nor received their consent to proceed. I note, too, that you appear to have already commenced some kind of construction on your property bounded by your fence and, given the absence of a properly posted building permit, you are likely already in violation of the District's building and code requirements.

I am available at a mutually agreeable date and time to discuss this matter further.

Sincerely,

A handwritten signature in black ink, appearing to read "J Hill", written over the printed name "James Hill".

James Hill

1538 T ST, NW

Washington, D.C. 2009

cc:

Attorney

Other Neighbors

The District Department of Consumer and Regulatory Affairs

Exhibit N – the Notice to Revoke the Building Permit



**GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS**

**Inspection and Compliance Administration &
Permit Operations Division**

NOTICE TO REVOKE BUILDING PERMIT NO. B1309278

**To: Rafael Romeu
1536 T St, NW
Washington, DC 20009**

Re: 1536 T St, NW (Square 0191, Lot 0098)

This is official notice from the Department of Consumer and Regulatory Affairs ("DCRA") that Building Permit No. B1309278 is hereby revoked, effective sixty (60) days from the date of service of this notice. The grounds for revocation are found at 12A DCMR § 105.6(6) which authorizes DCRA to revoke a building permit when "the code official determines that the permit has been issued in error."

Specifically, DCRA's Zoning Administrator has determined that Building Permit No. B1309278 was issued in error because it allows for construction that violates the District of Columbia Zoning Regulations. Your permit approved the construction of a rear deck addition at 1536 T St, NW. After additional review, the Zoning Administrator has determined that the addition will encroach into the required rear yard setback and will result in the lot occupancy exceeding the permissible maximum lot occupancy. See 11 DCMR § 403.2. Accordingly DCRA is revoking Building Permit No. B1309278, effective sixty days from the date of service of this notice.

RIGHT TO APPEAL

You have the right to appeal the revocation of your building permit. To appeal, you must mail or hand deliver a request for a hearing to the District of Columbia Board of Zoning Adjustment, 441 4th St, NW, Suite 210 S, Washington, DC 20001 within sixty (60) days. If you do not request a hearing within the time and manner specified in this notice, your permit will be immediately revoked without any further written notice. 12A DCMR § 105.6.1(1).

Any questions about this letter may be directed to my office at (202) 442-4542.

Date:

12-6-13


Rabbiah Sabbakhan, Chief Building Official

**Exhibit O – A letter from the Contractor Explaining the
Difficulty in Returning the Wood**

**SLK CONSTRUCTION
8557 HORSESHOE LANE
POTOMAC, MARYLAND 20854**

February 20, 2014

Mr. Rafael Romeu
1536 T Street, N.W.
Washington, DC 20009

RE: 1536 T STREET, N.W. DECK PROJECT

Dear Mr. Romeu,

Per our conversation last month, I am writing to explain the situation with the wood materials I have been storing to be used for the construction of your deck, which we purchased at your direction, in July, 2013.

As you know, the understanding in our agreement was that, for various reasons explained below, the wood not only cannot be returned to the supplier where it was purchased, but it would also be extremely difficult to re-sell to any other customer, and if we manage to re-sell it, it would be for a drastically reduced price.

The wood that we purchased, as you know, is an extremely dense hardwood of rare quality and limited availability. It is Brazilian Ipe hardwood, also known as Brazilian walnut. As noted in the articles, Brazilian IPE wood is very rare and of an extremely dense composition. As you can imagine, this wood material has a limited value for any deck other than the deck for which it was crafted; i.e., your deck. So the hardness and lengths of the cuts of Ipe make it useful for this project, and of much less value to anything else (eg walls, interior flooring, other decks that are of different sizes or shapes, etc., so we have lost it if not used on this deck.

As you might expect, for the reasons explained herein, we have no recourse to send the wood back to the supplier and get a refund. Nor do we have much likelihood of re-selling the wood without a drastic discount, as the wood is only available as a special order purchase to the cost for any potential purchaser. Attempting such a re-sell is a time consuming process for us, as well. We can hold the wood on a consignment basis for a limited time, but I would not expect to receive more than 20% of its value, and we would have to deduct our storage and marketing time and costs from any sale amount as well. Therefore, it is unlikely that you will see any refund from the wood.

Unless I hear differently from you, I will continue to hold the wood here in my shop. If the project goes forward in the end, I will be happy to discount all the storage costs. Please keep me posted on the progress of your variance request.

Sincerely,



Sergey Kovalchuk
President, SLK Construction



(866) 210-0567


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What is IPE?

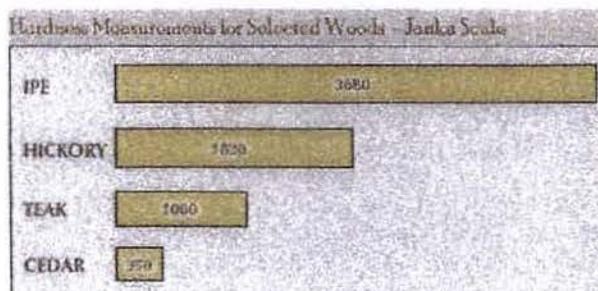
Ipe (pronounced "ee-pay") is a large tropical hardwood tree that grows abundantly throughout Central and South America. Ipe wood is prized for its durability, strength, and its natural resistance to decay, wet conditions, and insect infestation. Ipe's remarkable properties have already made it the top choice for commercial and residential decking. It is the wood used on the famous Atlantic City boardwalk!

Given its well-established reputation as a premium decking material, Ipe wood is an obvious choice for outdoor furniture. In addition to its strength, it has a beautiful dark color and a tight grain that gives it a very consistent coloring.

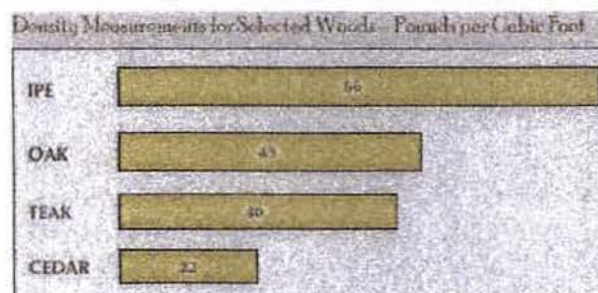
You may be wondering why Ipe is not more widely used for outdoor furniture. The answer is simple – the wood is so hard that it can be difficult to machine into a finished product. We have solved this problem with advanced manufacturing techniques and we are proud to offer you our exceptional Ipe wood outdoor furniture priced for a great value.

Physical Properties of Ipe

Hardness: The physical hardness of Ipe is remarkable. The graph below shows the relative hardness of Ipe along with several popular woods. The ratings are from the Janka test, commonly used to measure wood hardness. It is the number of pounds per square inch required to drive a small steel ball half its diameter into the surface of the wood. Ipe wood is more than 368% harder than Teak wood!



Density: The first thing you will notice about our Ipe wood furniture is how heavy it is. In fact, Ipe is the heaviest wood that is available for commercial usage. As you can see below, Ipe is super-dense, as measured by the weight of the wood in pounds per cubic foot. Ipe wood is 40% heavier than Teak wood!



Sources for Wood Measurements – *Wood Handbook: Wood as an Engineering Material*, US Forest Service; *Tropical Timbers of the World*, US Forest Service.

American Woodworker Magazine Praises Ipe Wood

An educational article about Ipe wood appeared in American Woodworker magazine, which is published by Reader's Digest. [Read the Article](#)

Environmental Considerations

Ipe is a commercially valuable tree that grows throughout South America in many types of habitats. Ipe is not an endangered species. Some of our current stock of Ipe wood furniture has a Forest Stewardship Council (FSC) certification, which is by far the most respected forestry practices certification in the world. We are constantly assessing the supply of FSC certified Ipe wood and we will strive to offer as much FSC certified product to our customers as possible. We encourage sustainable forestry practices, which offer the best remedy to exploitative deforestation.

Additional Ipe Information

These days, there are many claims made about [different woods used for outdoor furniture](#). We encourage you to research Ipe for yourself. Searching the web for "Ipe wood" yields plenty of information, especially about Ipe decking, and you can see for yourself how highly this wood is praised. Also, you will find sites with Ipe information on our [Links](#) page.

Ipe (or Ipé) is also known as Ironwood, Brazilian Walnut, Pau Lope or Lapacho. Ipe generally refers to all species of the *Tabebuia* genus.

About.com Pool & Patio

What is Ipe Wood?

By Lisa Hallett Taylor

Definition: Ipe is a hardwood from Brazilian rainforests that has garnered lots of attention in the past decade or so. Why? For one thing, it's as hard -- or *harder* -- than nails. Ipe is so dense that it often needs to be predrilled before pieces are connected. Some compare its strength to that of steel.

Other attributes of ipe wood include:

- **Durability:** Ipe can last more than 25 years outdoors.
- Eco-friendly; 100% natural wood.
- Mold, fire, weather and pest -resistant.
- Resists surface scratches.

The term **ipe lumber** or **ipe wood** is often clustered with other tropical hardwoods that share similar characteristics, especially for outdoor furniture.

Pronunciation: Eee-pay

Also Known As: Brazilian walnut, Brazilian hardwood, Ironwood, Amapa, cortex, Guayacan, Flor Amarillo, Greenheart, Madera negra, Tahuari, Lapacho negro, Pouli, Bethabarra, Tajibo, Mataverde, Tabebula, cumaru (*Dipterix odorata*) and Jarrah (*Eucalyptus marginata*). In France, it is known as bols ipe.

Alternate Spellings: Ipê, Ipe, Ipe

Common Misspellings: Ipay, Ipey

Examples:

Amy chose ipe over teak for her new [outdoor furniture](#)¹ because it was less expensive and is equally if not more durable.

This About.com page has been optimized for print. To view this page in its original form, please visit: <http://poolandpatio.about.com/od/patioglossary/g/What-Is-Ipe-Wood.htm>
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Links in this article:

1. <http://poolandpatio.about.com/od/howtofindacontractor/fss/Rcas-2012-Best-Patio-Furniture-Finalists.htm>



The Luma outdoor bench in ipe from All Modern.

Photo courtesy of PriceGrabber

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Wood That's Tough as Nails

What natural building material is highly durable, resists flames and doesn't float? It's ipe wood, a material that upscale builders and interior designers are increasingly incorporating into their plans. But density comes at a price.

By ALYSSA ABKOWITZ

Oct. 26, 2012 5:45 p.m. ET



Ipe is one of the densest hardwoods available. *Emile Dubuisson*



Ipe wood often is used outdoors as decking and siding. *Uhuru Design*



Ipe wood lasts a minimum of 25 years, although many architects say it can last up to half a century if maintained properly. *Getty Images*



Red Ipe Trees in bloom *Getty Images*

What is it? Also called Brazilian walnut, ipe (pronounced ee-pay) wood is typically found in South America and some parts of Central America. It is one of the densest hardwoods available, three times harder than cedar. Ipe has the same fire rating as concrete and steel, meaning it resists flames much longer than softer woods, and is so dense that it doesn't float in water.

How is it used? Because of its durability, ipe wood often is used outdoors as decking and siding. Inside, it's typically seen in flooring or cabinetry. For indoor use, the wood has to be kiln-dried to remove moisture, which keeps it from warping or cracking, says Scott Zubrow, architectural specialist at General Woodcraft in New London, Conn.

Pros: Like redwood, it has a natural oil that keeps bugs out; it's resistant to mildew and decay, making it ideal for coastal construction. Ipe wood lasts a minimum of 25 years, although many architects say it can last up to half a century if maintained properly.

Cons: Holes must be predrilled for screws. Its high oil and tannin content makes it difficult for paint to adhere. The hardness makes it unsuitable for intricate woodworking. It's also difficult to ensure the hardwood comes through legitimate channels. Earlier this year, ipe wood accounted for more than 90% of the wood seized in a major sting by Brazilian authorities. When shopping for ipe wood, look for certification from organizations like the Forest Stewardship Council, which tracks sustainable forestry.

Price:

At \$3.50 to \$4 per linear foot, ipe typically costs about 30% more than a knotty cedar or pine. A 400-square-foot ipe deck would cost about \$500, not including other materials or labor.

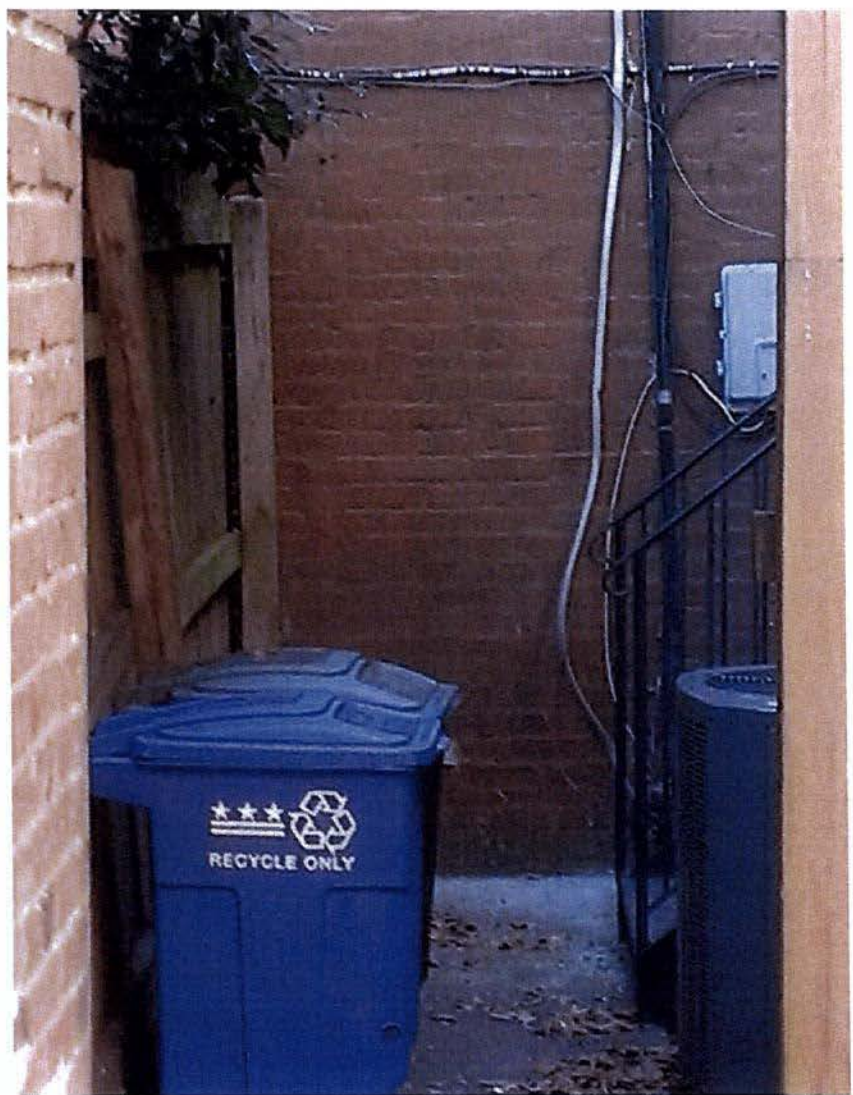
History:

Parts of the iconic Coney Island boardwalk are made of ipe wood.

Exhibit P – Photographs of the Easement Area







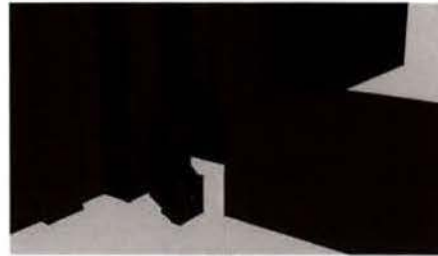




View from the Alley of the Rear of the Subject Property

Exhibit Q – Sun Studies

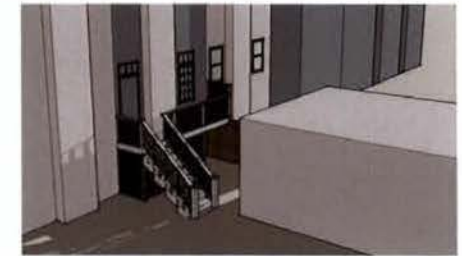
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SUNRISE - 7:09 AM
Existing Condition



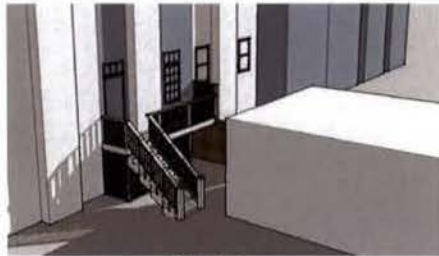
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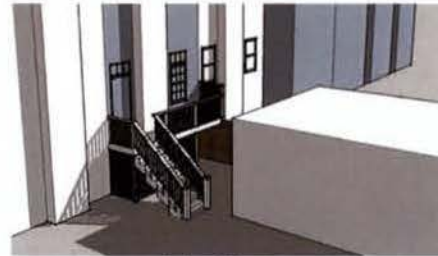
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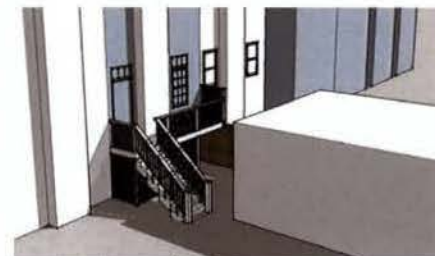
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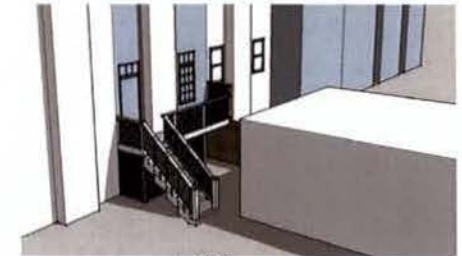
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11:09 am



12:09 pm

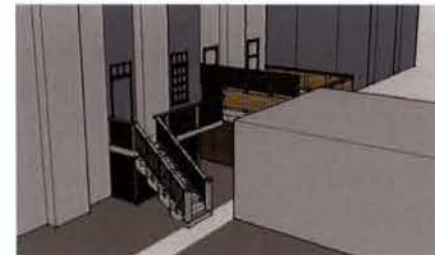


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MARCH 21st, 2014
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Proposed Condition



7:09 am



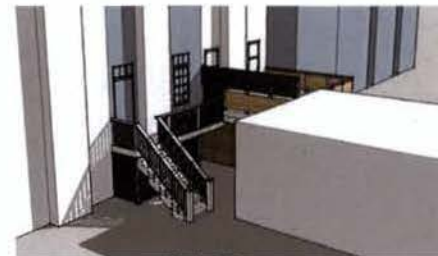
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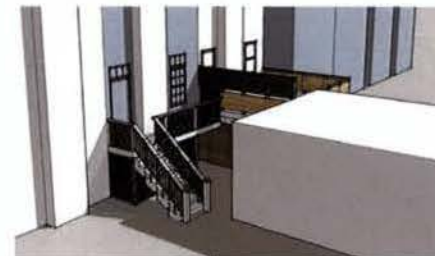
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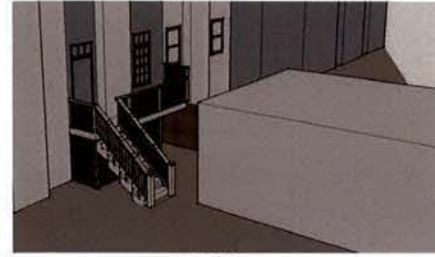


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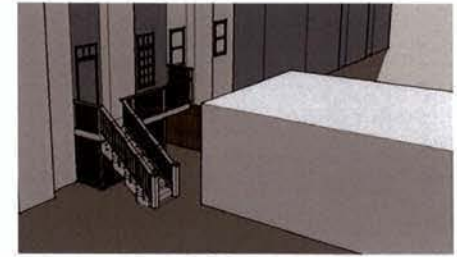
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Existing Condition



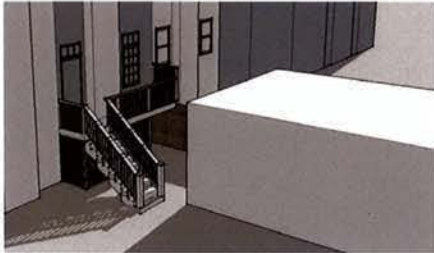
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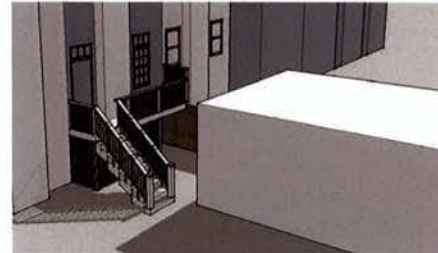
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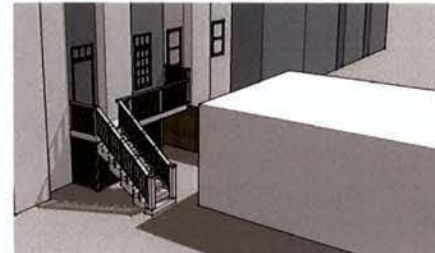
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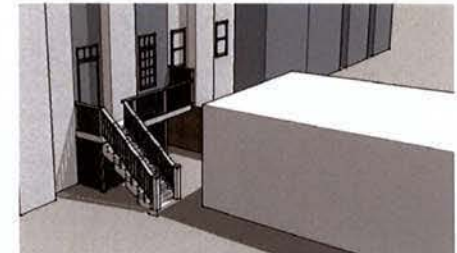
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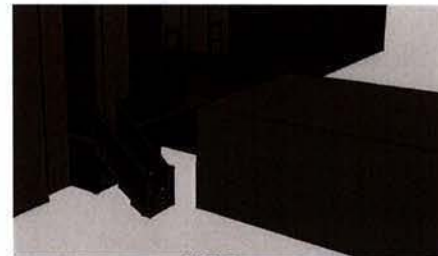


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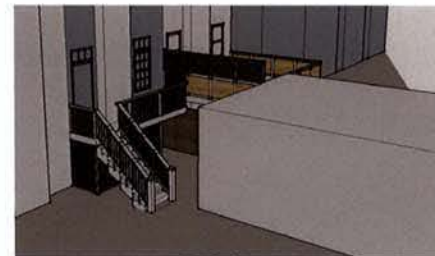


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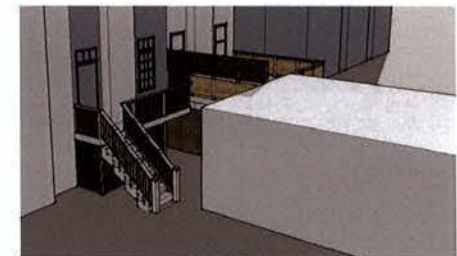
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Proposed Condition



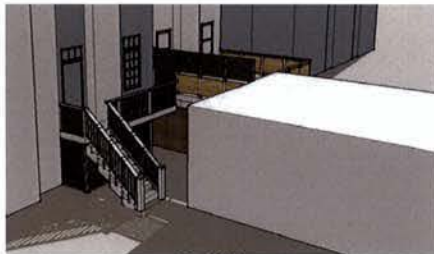
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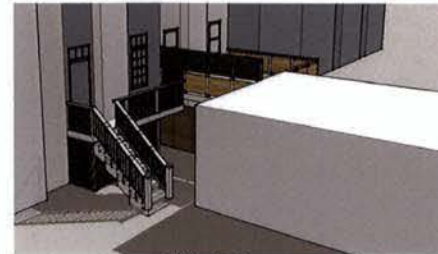
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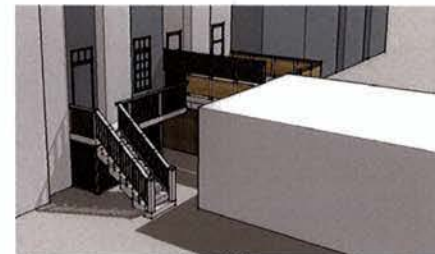
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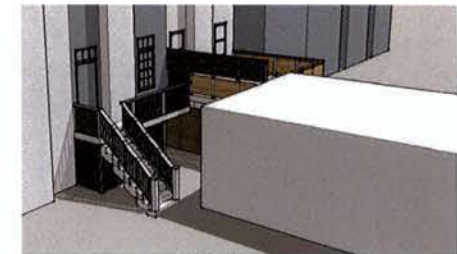
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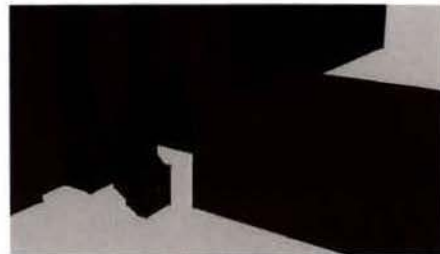


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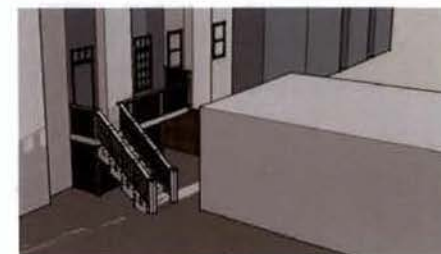
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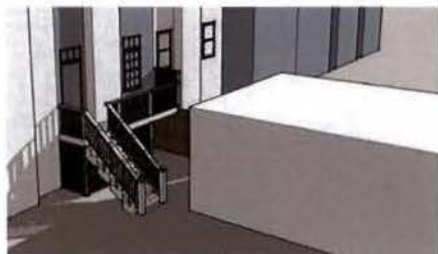
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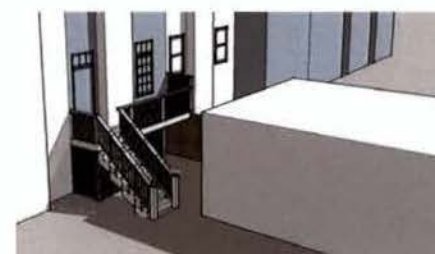
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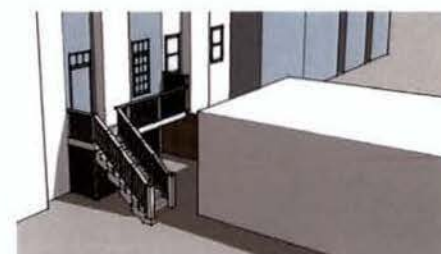
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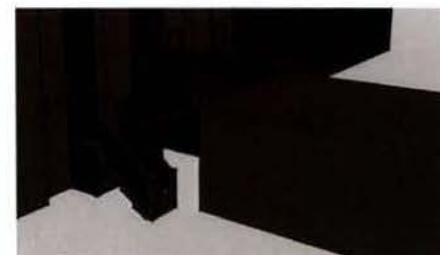


11:30 am



12:30 pm

SEPTEMBER 21st, 2014
SUNRISE - 6:55 AM
Proposed Condition



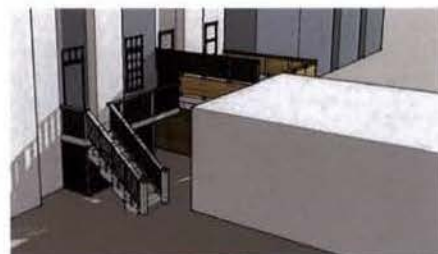
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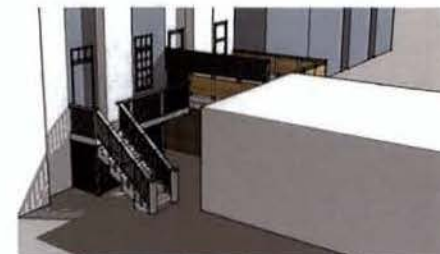
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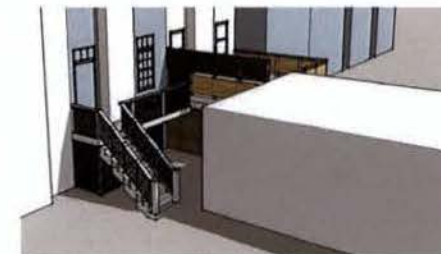
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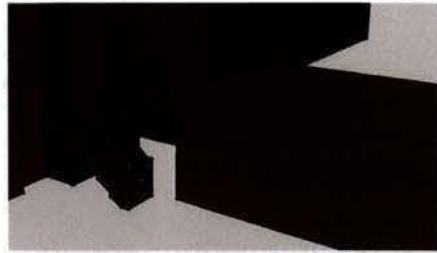


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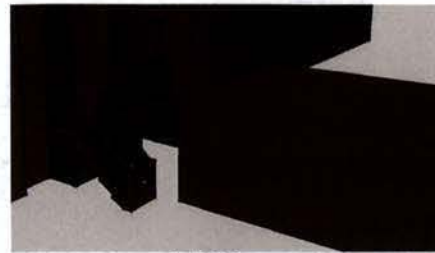


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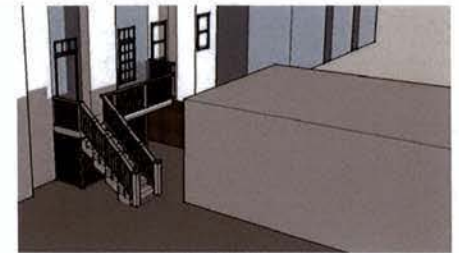
DECEMBER 21st, 2014
SUNRISE - 7:23 AM
Existing Condition



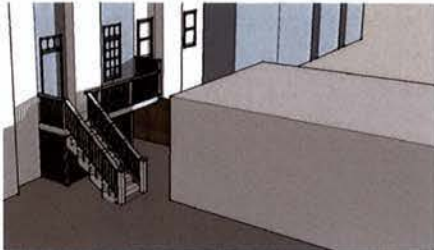
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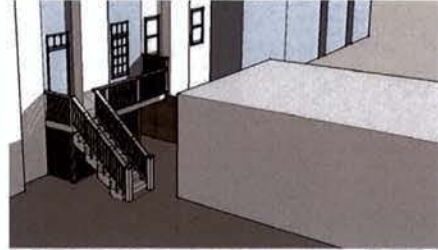
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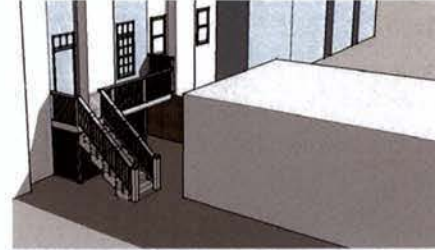
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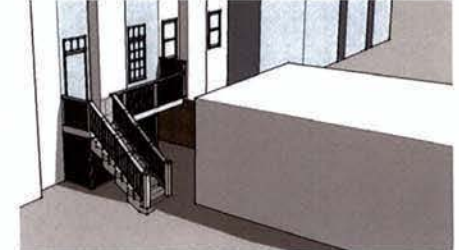
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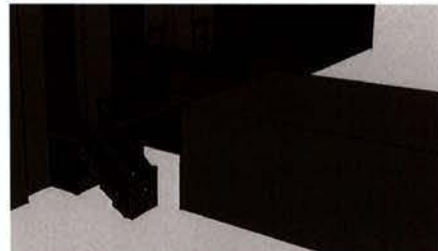


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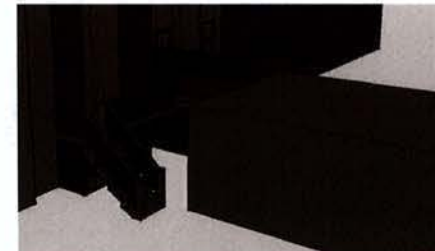


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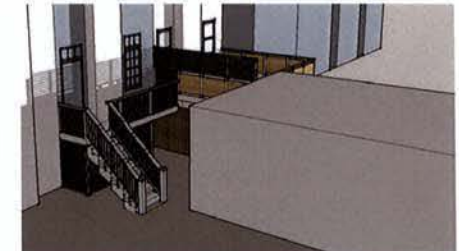
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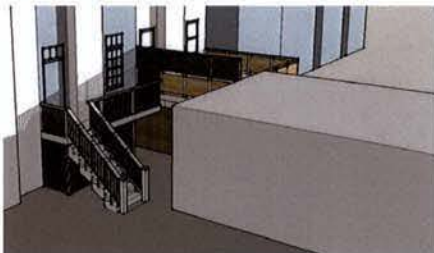
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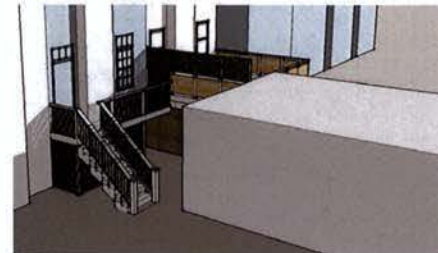
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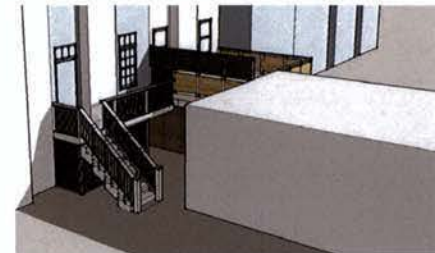
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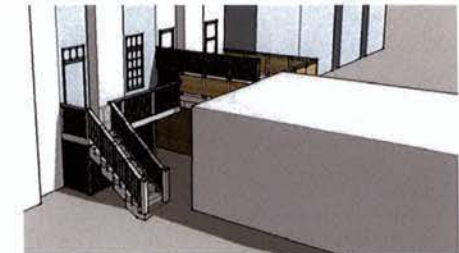
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11:30 am



12:30 pm

Exhibit R – Photographs of Neighboring Property



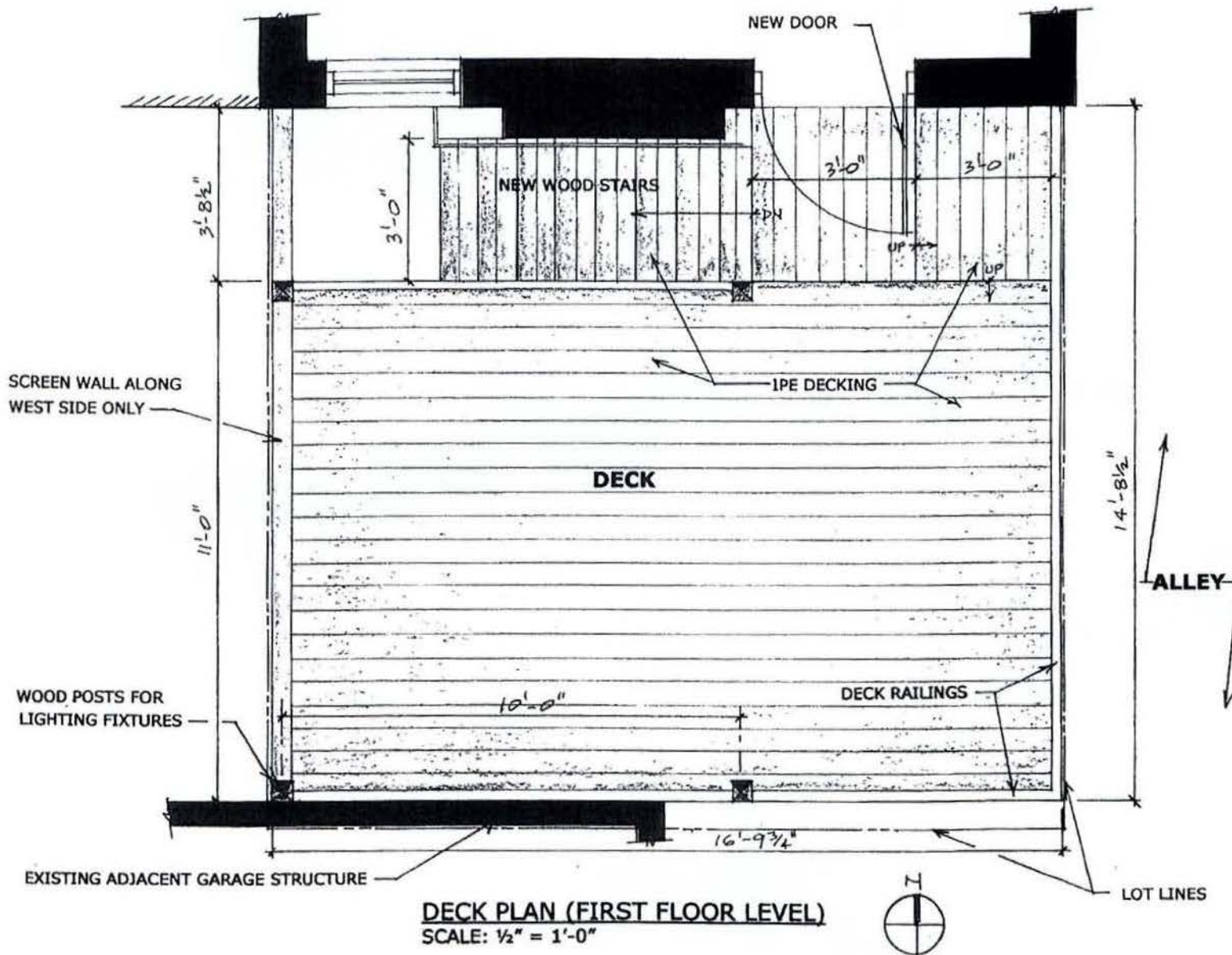
Rear of 1538 T



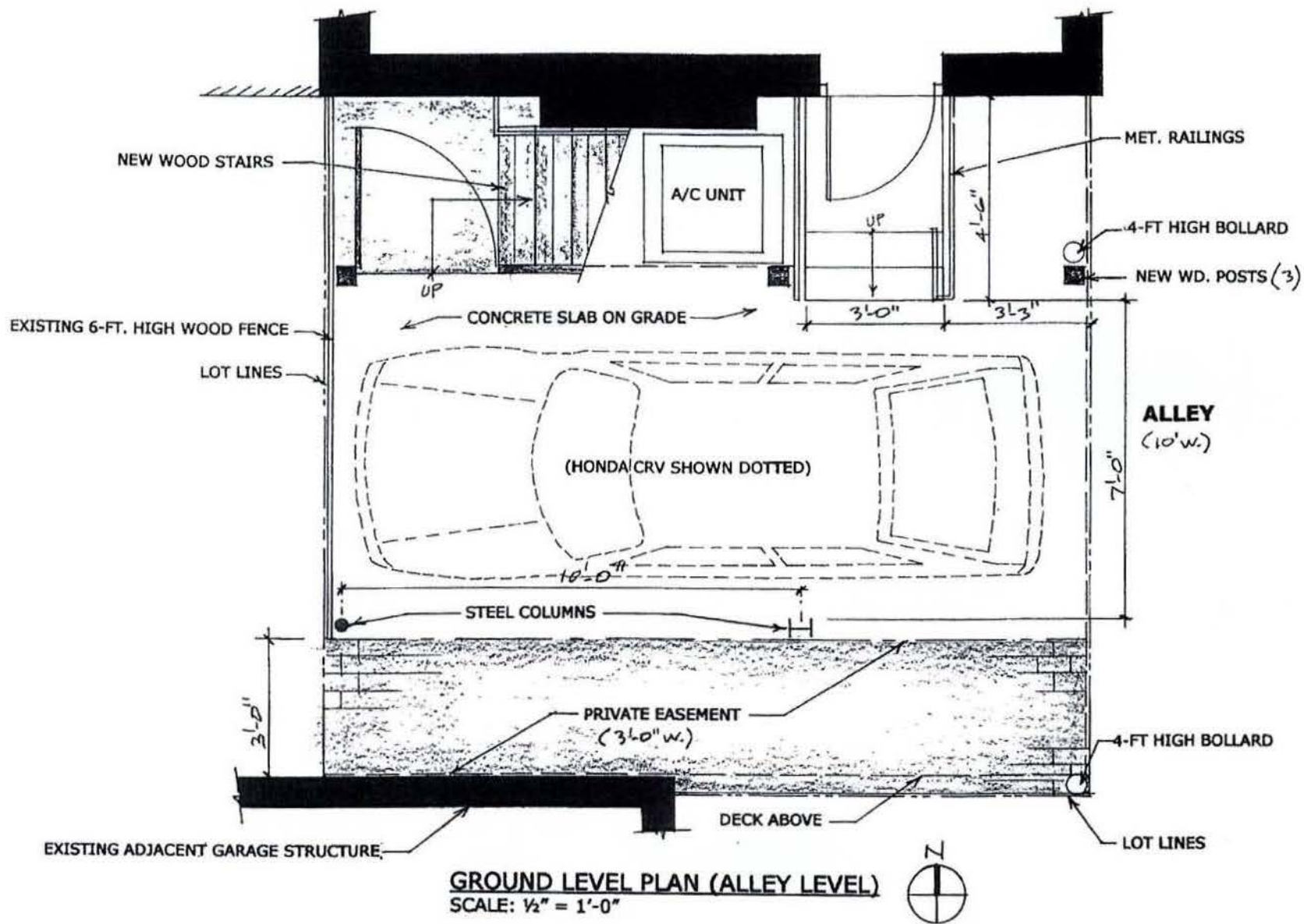
Rear of 1538 T

Exhibit S – Plans and Renderings

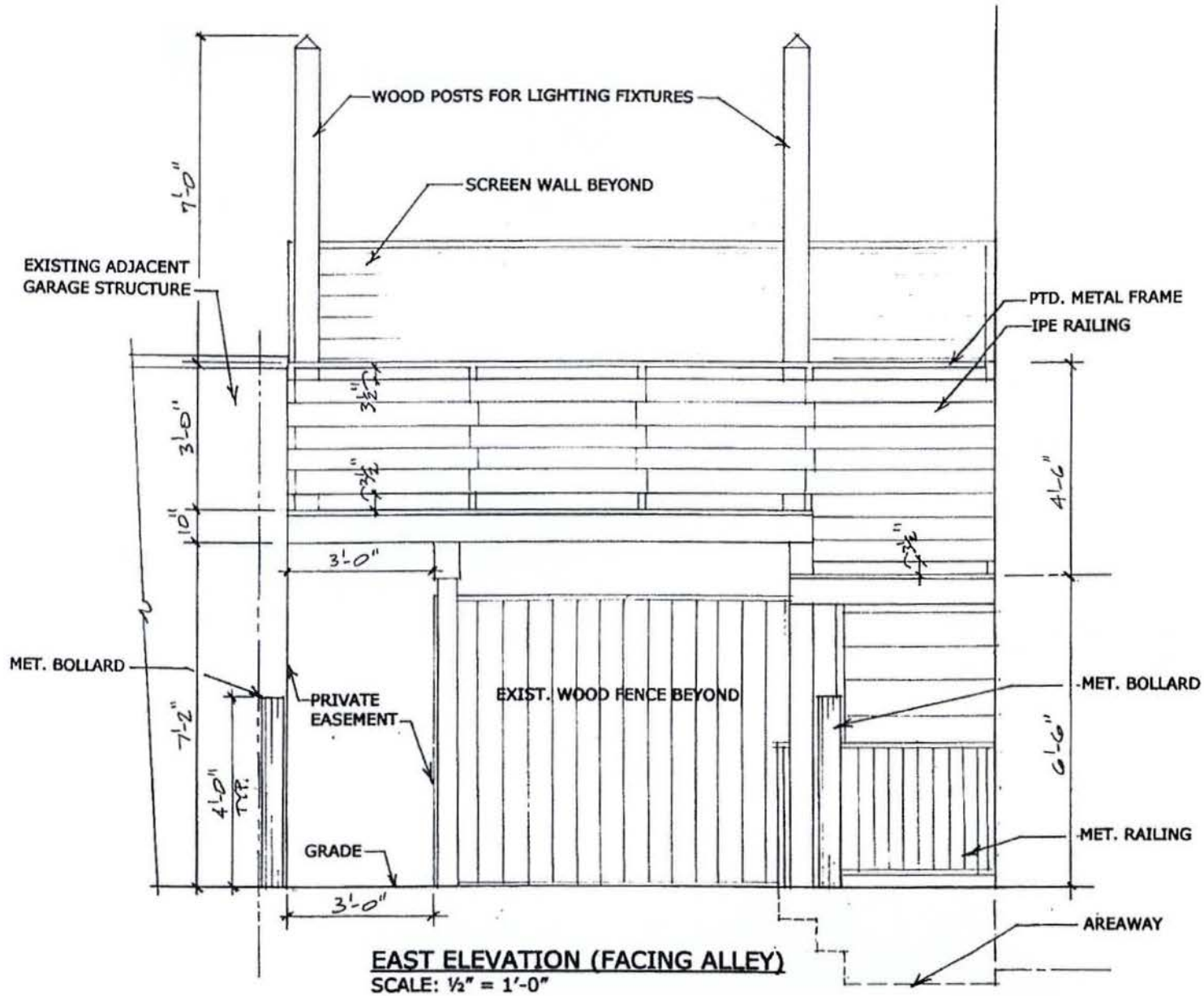




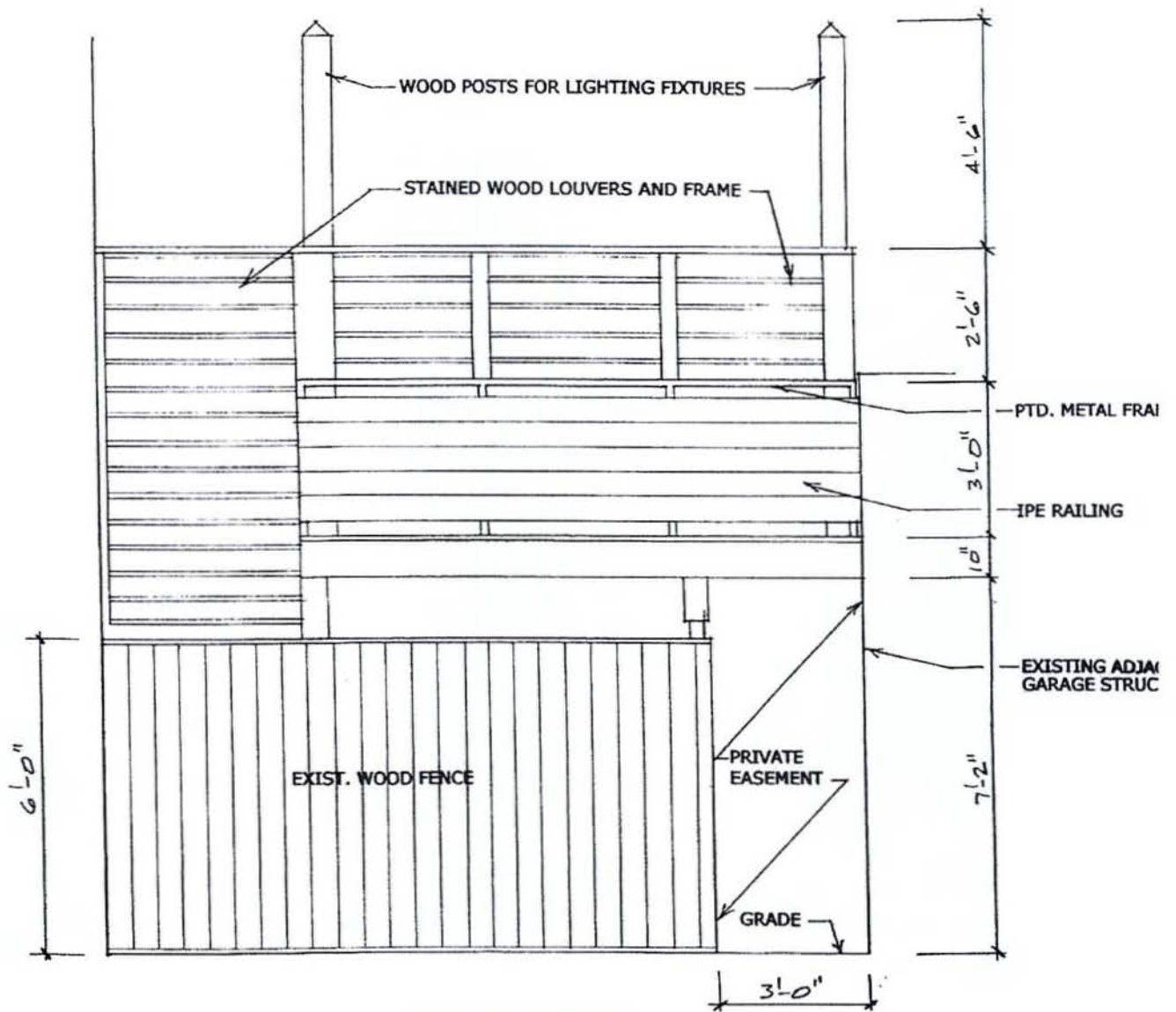
SHEET NUMBER: A-1	ROMEY RESIDENCE 1536 T STREET, N.W. WASHINGTON, DC 20009 MORRIS ARCHITECTS 60 MARKET STREET, SUITE 204 / GAITHERSBURG, MD 20878 TEL: 301-527-1002 FAX: 301-527-1003	REVISIONS:
PROJECT NUMBER: 1221	DECK PLAN	DATE: 2/24/14



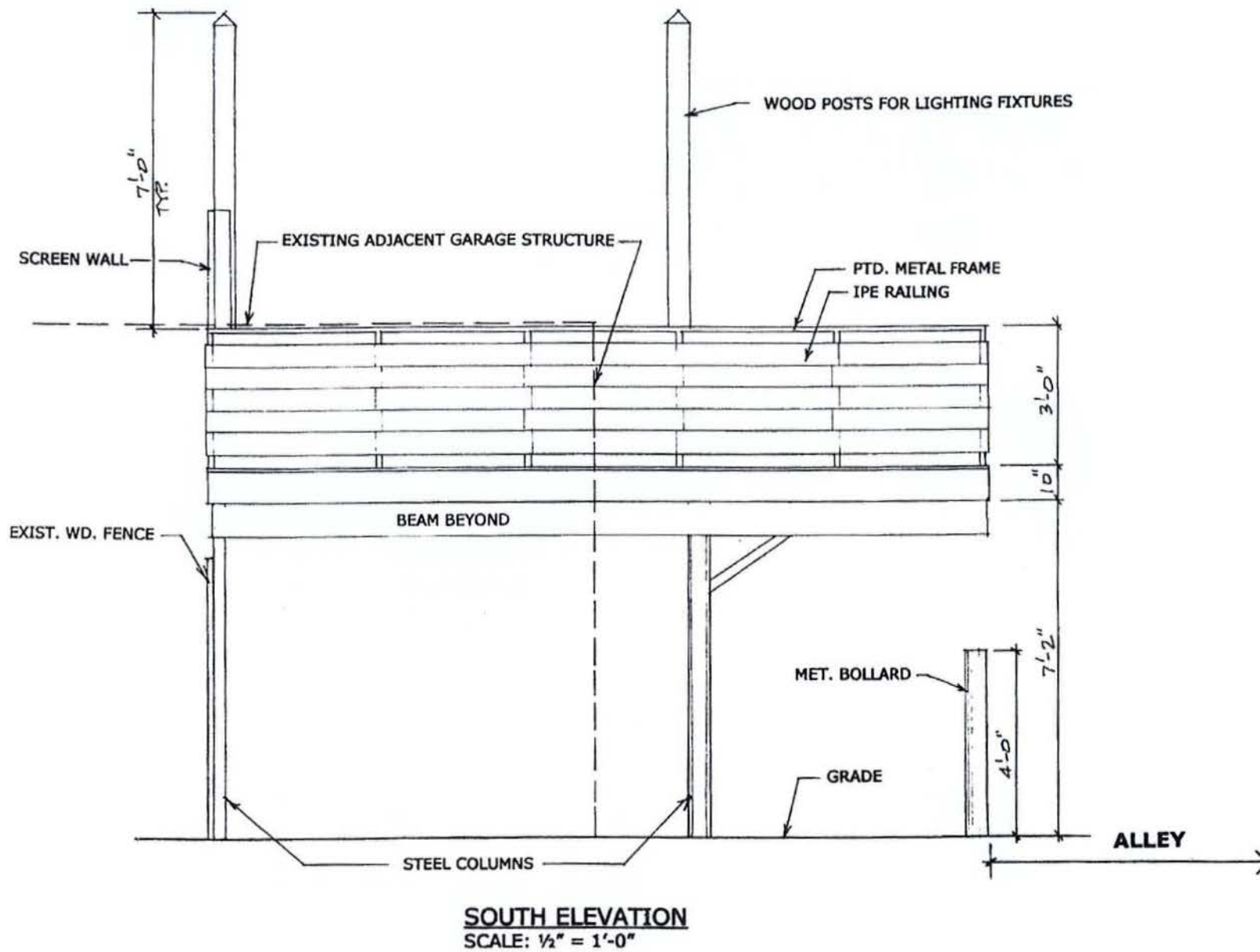
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PROJECT NUMBER: 1221	GROUND LEVEL PLAN		



SHEET NUMBER: A-3	ROMEU RESIDENCE 1536 T STREET, N.W. WASHINGTON, DC 20009 MORRIS ARCHITECTS 60 MARKET STREET, SUITE 204 / GAITHERSBURG, MD 20878 TEL: 301-527-1002 FAX: 301-527-1003	REVISIONS:
PROJECT NUMBER: 1221	EAST ELEVATION	DATE: 2/24/14



WEST ELEVATION
SCALE: $\frac{1}{2}" = 1'-0"$



SHEET NUMBER: A-5	ROMEO RESIDENCE 1536 T STREET, N.W., WASHINGTON, DC 20009 MORRIS ARCHITECTS 60 MARKET STREET, SUITE 204 / GAITHERSBURG, MD 20878 TEL: 301-527-1002 FAX: 301-527-1003	REVISIONS:
PROJECT NUMBER: 1221	SOUTH ELEVATION	DATE: 2/24/14

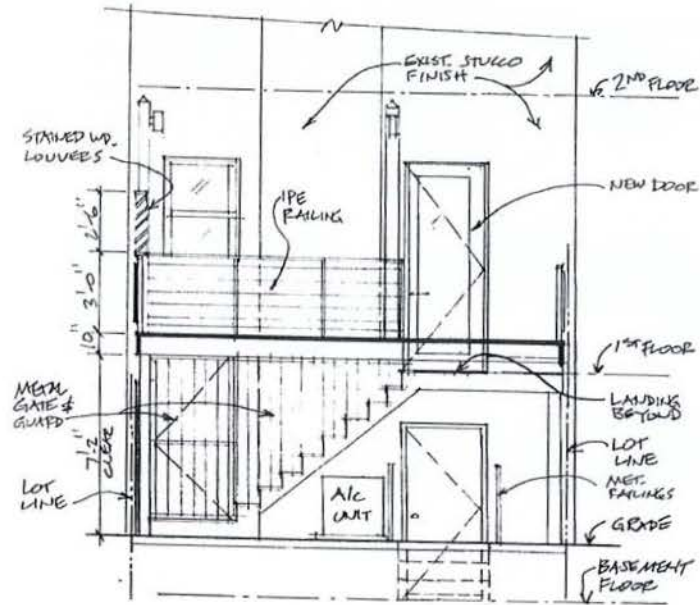
D20



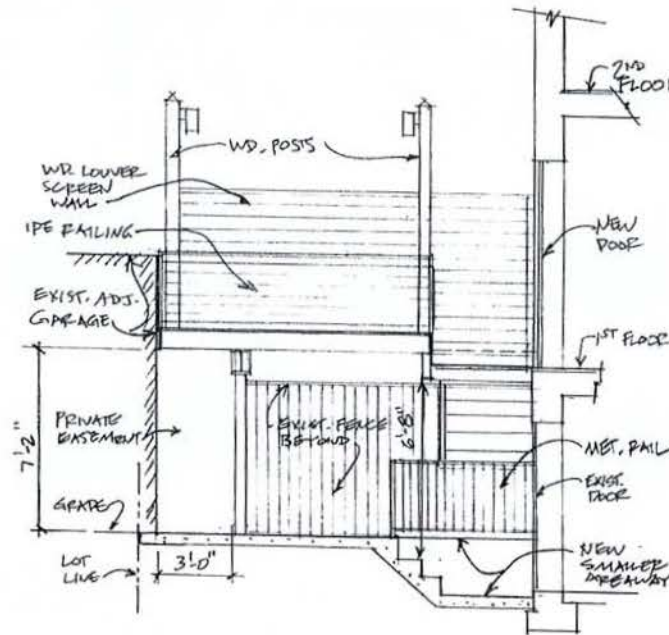
2012 MRIS Photo of Patio in the Rear of 1536 T St NW



Applicants' Rear Yard

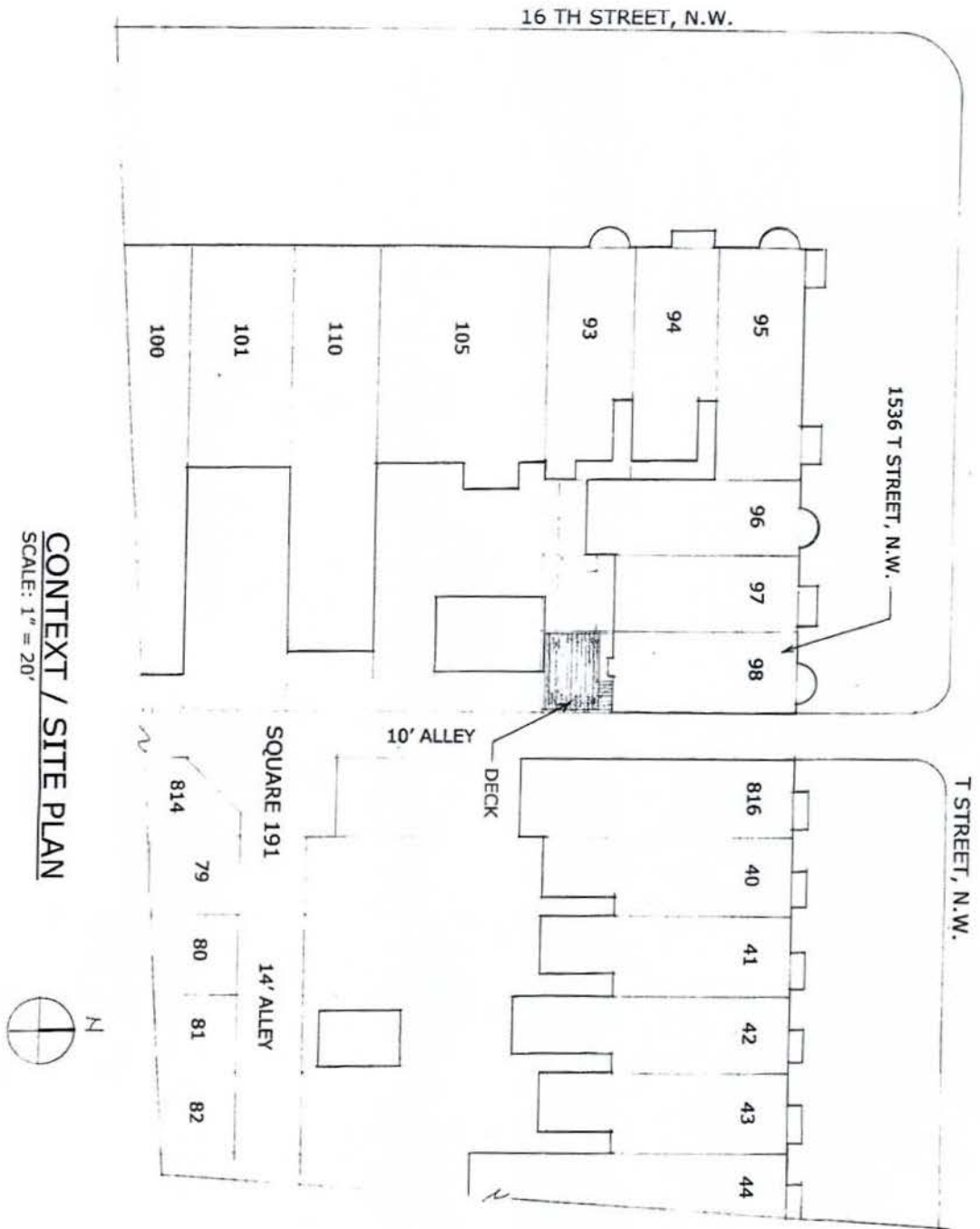


SECTION B-B (LOOKING NORTH)
SCALE: 1/4" = 1'-0"



SECTION A-A (LOOKING WEST)
SCALE: 1/4" = 1'-0"

SHEET NUMBER:	REVISIONS:
A-6	DATE: 2/24/14
PROJECT NUMBER: 1221	SECTIONS
ROMEJ RESIDENCE 1536 T. STREET, N.W. WASHINGTON, DC 20009 MORRIS ARCHITECTS 60 MARKET STREET, SUITE 204 / GAITHERSBURG, MD 20878 TEL: 301-527-1002 FAX: 301-527-1003	



SHEET NUMBER: SP-1	ROMEU RESIDENCE 1536 T STREET, N.W. WASHINGTON, DC 20009 MORRIS ARCHITECTS 60 MARKET STREET, SUITE 204 / GAITHERSBURG, MD 20878 TEL: 301-527-1002 FAX: 301-527-1003	REVISIONS:
PROJECT NUMBER: 1221	SITE PLAN	DATE: 2/24/14