

BEFORE THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application of Rafael Romeu (the "Applicant")
1536 T Street, NW; Square 191, Lot 98 (the "Property")

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PRELIMINARY STATEMENT OF COMPLIANCE WITH THE BURDEN OF PROOF

I. Background

The Property is located at 1536 T Street, NW (Square 191, Lot 98). It is improved with a one-family row dwelling (the "House") built around 1900. The Property has a lot area of approximately 921 square feet. The House occupies about 72% of that land area. The remaining portion of the land area included a rear deck which was at the first floor level of the House (the "Previous Deck"). The Previous Deck existed on the Property from at least 1951 until two (2) to three (3) years ago. The rear of the House has no egress into the rear yard on the lower level. The only egress at the rear of the Property is at the first floor level, in the area of the Previous Deck. At the rear of the Property is a 3-foot wide easement granting access to the alley for several property owners to the west (the "Easement").

The Applicant and his wife purchased the Property in September 2012. Shortly thereafter, the Applicant engaged an architect to investigate whether or not he could construct a rear deck at the first floor level. The architect, Bill Morris, found evidence of the existence of the Previous Deck, which covered virtually the entire rear yard. In February, 2013, the Applicant and his architect sought the advice of the Zoning Division of DCRA on whether or not the proposed deck could be constructed in accordance with the Zoning Regulations. Based on the evidence of the Previous Deck, the Zoning Division informed the architect, in February, 2013, that the rear deck could be built as a matter-of-right, as a replacement for the Previous Deck. Based on this determination, the Applicant moved forward in directing the architect to design and draw plans for the proposed deck.

Between October, 2012, and September, 2013, the Applicant had several conversations with the immediate neighbor to the west, Mr. James Hill, regarding the proposed deck. Mr. Hill expressed approval of the proposed deck, noting that the construction of a gate at the end of the Easement area would resolve security concerns that he had.

On July 26, 2013, DCRA issued a building permit for the construction of the rear deck (the "Building Permit"). Based on the issuance of the Building Permit, the Applicant proceeded with contracts and retainers for a contractor and purchased costly custom-cut wood and other materials required for construction of the proposed deck. In August, 2013, Mr. Hill signed the

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30-day notification letter delivered to him by the Applicant in accordance with the Building Code.

It was not until September 29, 2013, that the neighbor Mr. Hill voiced any concern about the proposed deck, when he presented the Applicant's wife, in person, with a "cease and desist" letter late on a Sunday night demanding that the Applicant stop construction. On October 2, 2013, Mr. Hill, along with Edward Hanlon (an appellant in other BZA cases and resident of Swann Street, NW - whose house is about 100 feet away from the area of the proposed deck) filed an appeal of the Zoning Administrator's decision to approve the Building Permit issued over two months earlier.

At this point, the Applicant stopped work and hired counsel to enter into discussions with the Zoning Administrator. The outcome of those discussions was a decision by the Zoning Administrator to rescind his department's earlier approval of the July Building Permit application, and to cause the revocation of that permit, ostensibly based on the Applicant's failure to provide evidence of permit approval for the deck which, by photo evidence, existed at least as early as 1951. Because the Applicant could not meet that difficult burden of producing a building permit for the pre-1958 deck, the Zoning Administrator revoked the Building Permit, and the Applicant now files this request for area variance relief to be able to construct the deck as originally approved.

II. Burden of Proof

In order to receive variance relief, the applicant must satisfy a three-part test which requires: (1) a demonstration that the property is affected by some exceptional situation or condition; (2) without the requested variance relief, the strict application of the Zoning Regulations would result in some practical difficulty upon the property owner; and (3) the requested relief can be granted without substantial detriment to the public good or substantial impairment of the zone plan.

A. Property Is Affected by an Exceptional Situation or Condition

The Property is a small, rectangular shaped lot which borders a public alley to the east and a neighboring row structure to the west. The Property included a deck which was similar to the proposed deck from at least 1951 until about 2 or 3 years ago. The House on the Property has no egress to the rear yard on the lower level. The Applicant was extremely diligent in trying to determine whether or not he was permitted to construct the proposed deck.

After being told in February, 2013, by DCRA Zoning Division staff that the proposed deck would be permitted, the Applicant moved forward in reliance on that advice to engage the architect to design and draw plans for the proposed deck. After receiving a Building Permit in July, 2013, for the construction of the proposed deck, the Applicant acted in reliance on that

Building Permit in contracting with a contractor, paying that contractor, purchasing expensive custom-made building materials, and beginning the approved work.

The neighbor, James Hill, and another D.C. resident, Edward Hanlon, filed an appeal of the Building Permit on October 2, 2013, more than two months after the Building Permit was issued on July 26, 2013. The Zoning Administrator issued a Notice to Revoke the Building Permit on December 6, 2013, more than four months after the Building Permit was issued.

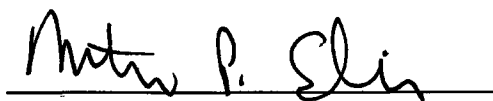
The Board has, in several instances, found that the zoning history for a particular property can represent an exceptional situation or condition with a property. The above scenario represents such a situation.

B. Strict Application of the Zoning Regulations Would Result in Practical Difficulty upon the Property Owner

Due to the above-described zoning history for the Property, strict compliance with the Zoning Regulations would present a practical difficulty on the owner of the Property, the Applicant. The Applicant spent tens of thousands of non-refundable dollars in reliance on the July, 2013, Building Permit approval, and not being able to complete construction of the proposed deck would be unnecessarily burdensome to the Applicant.

C. Relief Can Be Granted Without Substantial Detriment to the Public Good or Substantial Impairment of the Zone Plan

The requested relief can be granted without substantial detriment to the public good or substantial impairment of the zone plan. A deck existed in this same location for at least the past sixty years, up until 2 or 3 years ago. The deck will not have any material impact on the light and air and privacy of adjoining neighbors. For these reasons, the granting of relief will not be a substantial detriment to the public good or to the integrity of the Zone Plan.

A handwritten signature in black ink, appearing to read "Martin P. Sullivan", is written over a horizontal line.

Martin P. Sullivan, Esq.
Sullivan & Barros, LLP