

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

Statement of Donald Graham and Amanda Bennett  
BZA Application No. 18815  
ANC 2B

Further Hearing: January 6, 2015

**STATEMENT OF THE APPLICANT**

This is the statement of Donald Graham and Amanda Bennett (the “Applicant”), owners of the single family house located at 2028 Hillyer Place, NW. The Applicant is proposing the construction of a deck at the rear of the existing house. The deck will replace an existing deck that is lower than the proposed deck. Since the new deck is more than four feet above the surface of the rear yard, it will count toward lot occupancy thereby resulting in the need for a variance from the lot occupancy limit of 60%. Other minor variances are required as such – FAR, rear yard and relief to expand a structure that slightly extends lot occupancy. While multiple variances are required, this application is minor and technical in nature and does not involve any change to the footprint of the house itself.

The Property is located on the south side of Hillyer Place in the Dupont Circle neighborhood. It is zoned DC/R-5-B. The proposed deck has been approved by the Historic Preservation Review Board.

## **I. NATURE OF RELIEF**

The Applicant requests that the Board of Zoning Adjustment (the "**BZA**" or the "**Board**") approve variance relief pursuant to Sections 3103.1 and 3103.2 of Title 11 of the District of Columbia Municipal Regulations.

## **II. BACKGROUND AND PROJECT DESCRIPTION**

As described in the testimony at the initial hearing, this is a straightforward and small-scale project. The Applicant seeks to replace an existing deck. Since the new deck needs to allow for adequate clearance over an existing storm water basin and manhole in the rear yard, the height must exceed the four feet. A deck with a height of over four feet counts toward lot occupancy thereby triggering the need for the lot occupancy and other variances.

The house is located in a fully developed and historic urban neighborhood at the northern edge of the downtown core. It is a fairly dense area with a combination of apartment houses, office buildings, retail uses and single family houses. The zoning of the site would actually allow apartment house use so its use as a single family house is much less intensive than the zoning allows. Because of the urban nature of the area, open space is highly desirable. For that reason, the majority of the houses in the square have rear decks similar to the deck that the Applicant proposes.

## **III. THE APPLICATION MEETS THE REQUIREMENTS FOR AREA VARIANCES UNDER SECTION 3103.2 OF THE ZONING REGULATIONS**

The burden of proof for an area variance is well established. The applicant must demonstrate that: (i) the property is affected by an exceptional or extraordinary situation or condition; (ii) that the strict application of the Zoning Regulations will result in a practical

difficulty to the Applicant; and (iii) that the granting of the variance will not cause substantial detriment to the public good or substantially impair the intent, purpose or integrity of the zone plan. In considering the burden of proof, the Board is to consider the extent of the relief requested and in the past, the Board generally has attempted to accommodate variance requests from homeowners where some unusual feature of the site creates practical difficulties. The proposed variance is very minor in nature and does not affect the height, density or footprint of the house itself. As set forth below, the Applicant meets the three-part test for the requested lot occupancy variance.

**A. The Property is Affected by an Exceptional Situation or Condition**

The exceptional situation or condition standard pertains to the property which includes the permanent structures existing on the land. Here, the site itself contains a substantial and permanent feature that is uncommon in the block. There is a storm water basin and manhole in the rear yard that is located five feet from the rear façade of the house and seven feet from the alley side of the property. (See photographs attached as Exhibit A). While it is difficult to establish the age of the drain, it appears to be quite old and was probably installed to avoid water issues in the lower level of the house. This drain results in an unusual condition on the site that affects the ability to comply with the height limit associated with a zoning compliant deck.

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

To satisfy the second element for an area variance standard, the Applicant must demonstrate a practical difficulty. The applicant must demonstrate that compliance with the regulation would be unnecessarily burdensome and that the practical difficulty is unique to the

particular property. Some other factors that the BZA may consider are the weight of the burden of strict compliance, the severity of the variance(s) requested, and the effect the proposed variance(s) would have on the overall zone plan.

As noted above, the drain at the rear of the property is an unusual condition. Adequate clearance is required over the drain to allow for its proper functioning and maintenance. If the drain becomes blocked, the lower level of the house will be vulnerable to flooding. The Applicant has consulted with a plumbing firm to determine the appropriate clearance for the drain to allow its servicing. The firm recommended a minimum vertical clearance of seven feet and a minimum horizontal clearance of five feet. (See Letter attached as Exhibit B) In addition, in order to seek further guidance, the Applicant consulted with Brian McDermott of DC Water to determine the clearance required for its facilities. DC Water recommends a clearance of four feet horizontally and ten feet overhead for public drains. (See email attached as Exhibit C).

The proposed deck has been designed with a clearance of slightly over seven feet with a horizontal clearance of five feet which will allow for its servicing. The maximum clearance of four feet that would be associated with a matter of right deck, one that does not require lot occupancy or other variance relief, simply would not allow adequate clearance for servicing. Further, reducing the size of the deck to simply avoid covering the drain would so greatly constrain its size that the deck would be of little value. For that reason, the unusual condition affecting the site creates a practical difficulty in the strict application of the regulations.



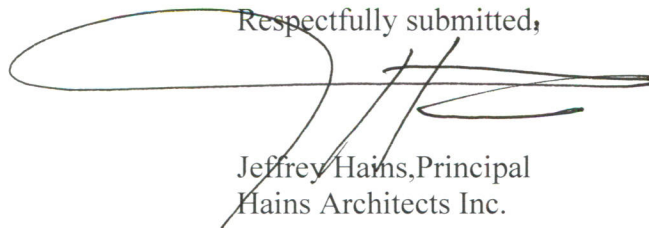
**C. Relief Can Be Granted Without Substantial Detriment to the Public Good and Without Impairing the Intent, Purpose and Integrity of the Zone Plan**

Finally, the Applicant must demonstrate that granting the variance will do no harm to the public good or to the zone plan. The requested variance can be granted without harm to the public good or the zone plan. The application is widely supported by the surrounding neighbors and ANC 2B. There is no known opposition. The level of support is not surprising given that many of the other houses in the square have similar decks. Also, the height of the proposed deck will allow parking to be accommodated on the site. The provision of parking is generally regarded as beneficial to the immediate neighborhood.

**IV. CONCLUSION**

For all of the above reasons, the Applicant is entitled to the requested variance relief requested in this case.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Jeffrey Hains', is written over the typed name and title. The signature is fluid and cursive, with a large loop at the beginning and a horizontal stroke extending to the right.

Jeffrey Hains, Principal  
Hains Architects Inc.

### **Certificate of Service**

I hereby certify that I sent a copy of the foregoing document to the following addresses on

December \_\_\_\_\_ 2014, by first class mail or hand delivery:

Jennifer Steingasser

Office of Planning

1100 4<sup>th</sup> Street, SW

Suite E650

Washington, DC 20024

ANC 2B

#9 Dupont Circle, NW

Washington, DC 20036



EXHIBIT "A"  
2028 HILLYER PL.  
BZA #18815



EXHIBIT "B"

**ALPHA PLUMBING & HEATING, INC.**  
**18004 Meadowsweet Court**  
**Sandy Spring, MD.**  
**20860**  
**Tel: 301-570-1947**  
**Fax: 301-570-1948**

Jeffrey Hains, Principal  
Hains Architects, Inc.

November 21, 2014

RE: Manhole & Storm Water Basin conditions at 2028 Hillyer Pl. N.W.

Dear Mr. Hains,

I made a site visit to the above property to review existing site conditions about the manhole and basin in the rear yard area. Access to the manhole is critical for repairs or to unclog pipes. Space around & above manhole is required to bring in equipment, ladders or block & tackle pulley tripod for lifting material.

The existing manhole & basin is located below an existing deck structure. Height between manhole & deck structure is 36". As such the height is impractical for workmen and equipment to service manhole.

Based on experience I recommend a headroom height of 7 to 8 feet above manhole to underside of deck structure and 5 foot radius horizontally around manhole.

Alley access thru the existing overhead door is sufficiently wide to allow access of equipment and material.

The above guidelines will provide practical access necessary to service manhole.

Sincerely,



Jimmy Macheras  
**Alpha-1 Plumbing Company**



# EXHIBIT "C"

**jhains@hainsarch.com**

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**Subject:**

FW: RE: manhole

--- On Thu, 10/16/14, Brian T. McDermott <Brian.McDermott@dcwater.com> wrote:

> From: Brian T. McDermott <Brian.McDermott@dcwater.com>  
> Subject: RE: manhole  
> To: "nicole price" <nikprice@yahoo.com>  
> Date: Thursday, October 16, 2014, 1:40 PM Nicole,  
>  
> Here are some general rules of  
> thumb that can be considered.  
>  
> If it were my manhole then I would expect that it has a pipe connected  
> to it so I would have several maintenance functions:  
>  
> 1)  
> access to a manhole for which I need to get a man on a tripod into it  
> (4' clear all around with 10 over head  
> minimum)  
> 2) if it's a sewer manhole I  
> need to get a cleaning truck to it (12' wide minimum right up to the  
> manhole and 16" above in order to get a cleaning boom off a vector  
> truck to it.)  
> 3)  
> If in need to excavate and remove/replace/repair the pipe I need  
> clearance for a back hoe and dump truck to put the dirt into (20' wide  
> and 25' overhead - the boom height on a backhoe bucket getting over  
> the sides of a 10 wheel dump truck.  
>  
>  
>  
> Brian T. MCDERMOTT P.E., Director, Permit Operations, DC Water  
> 1100  
> 4th Street, SW  
> Washington, DC 20024  
> (202) 646-8610 (desk), (202) 812-6139  
> (cell)  
>  
>  
>  
> -----Original Message-----  
> From: nicole price [mailto:nikprice@yahoo.com]  
>